

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPERATIONS AND REGULATIONS COMMITTEE MEETING
OPEN SESSION

Friday, November 19, 1999

10:50 a.m.

750 First Street, N.E.
9th Floor Conference Room
Washington, D.C. 20002-4250

COMMITTEE MEMBERS PRESENT:

LaVeeda Morgan Battle, Chair
Ernestine P. Watlington

F. William McCalpin
John N. Erlenborn

BOARD MEMBERS PRESENT:

Edna Fairbanks-Williams
Douglas S. Eakeley, ex officio

Maria Luisa Mercado

STAFF AND PUBLIC PRESENT:

Linda E. Perle, CLASP
Alan W. Houseman, CLASP
John McKay, President
Danilo Cardona

Suzanne B. Glasow, LSC
Laurie Tarantowicz
Joan Kennedy
Ted Faris

Victor M. Fortuno, VP Legal Affrs, GC & Corp Sect

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MOTIONS:pgs.4, 40, 43, 47, 55, 104, 158, 206,
213, 214.

1 P R O C E E D I N G S

2 CHAIR BATTLE: I'm going to go ahead and call to
3 order this meeting of the operations and regulations
4 committee. This is November 19th, 1999. We have with us
5 three of the four members of this committee, John Erlenborn
6 and Ernestine Watlington are with us. Good morning to you.

7 MS. WATLINGTON: Good morning.

8 CHAIR BATTLE: And Bill McCalpin is here. He has
9 not yet joined us, but I'm certain he will be joining us
10 shortly.

11 This meeting is running contemporaneous with the
12 provisions committee meeting, so we don't have a lot of
13 additional board members participating with us this morning.

14 We have before us an agenda and I believe that I
15 will entertain a motion to approve the agenda. What I'd like
16 to do is change the agenda around a bit and delete one of the
17 items on the agenda.

18 Item number seven, which is consider and act on
19 proposed procedures to handle grievances filed against the
20 corporation's president or its inspector general is one that
21 I'd like to delete for purposes of our discussion today. I

1 understand that at a later time we are going to be addressing
2 a personnel manual revision, and this item can be considered
3 along with our consideration of the employee personnel manual
4 and handbook.

5 Secondly, what I'd like to do is to move up item
6 eight to item one. And item eight is, of course, consider
7 and act on a proposed program of cash awards to individual
8 corporation employees in recognition of their outstanding
9 performance. I'd like to defer until after that,
10 consideration of our minutes and the other items that we have
11 on our agenda.

12 And with those changes, I'll entertain a motion to
13 adopt an agenda.

14 M O T I O N

15 MS. WATLINGTON: I'll so move.

16 CHAIR BATTLE: Okay, it's been moved. And with
17 that nod seconded --

18 MR. ERLNBORN: Second.

19 CHAIR BATTLE: -- that we adopt the agenda as
20 revised. All in favor?

21 (Chorus of ayes.)

1 CHAIR BATTLE: All opposed?

2 (No response.)

3 CHAIR BATTLE: The motion carries. So we have
4 before us Joan Kennedy, who will present to us our now item
5 one, which is consider and act on proposed program of cash
6 awards to individual corporation employees for recognition of
7 outstanding performance.

8 MS. KENNEDY: Good morning, Ms. Battle, and members
9 of the committee. For the record, my name is Joan Kennedy, I
10 am director of administration and human resources here at the
11 corporation.

12 Thank you for allowing me to come before you this
13 morning. I want to share with you the latest piece of our
14 continuing efforts to develop a professionalized human
15 resources program for the Legal Services Corporation.

16 As I mentioned to some of you earlier in a briefing
17 that we had, one of the goals of the corporation is to move
18 toward professionalization of its staff, move toward
19 providing an employee-friendly workplace, a family-friendly
20 workplace, and we're in the process of developing a number of
21 initiatives which move us closer to that goal.

1 You will recall we have come before you before with
2 our initiative to undertake a comparability study to look at
3 the salaries inside the organization and how they compare
4 internally, as well as how they compare externally in the
5 marketplace.

6 We've also brought before you a number of other
7 initiatives that we have implemented here at the corporation
8 to improve working conditions for our employees, to include
9 the transportation allotment and a comprehensive benefits
10 program.

11 The program that I'm going to be presenting to you
12 today is yet another step, it's just one step in that whole
13 process of moving us toward that ideal employee-friendly
14 workplace that I speak about.

15 For several months now, we've been working as a
16 team here, at the corporation, in the development of an
17 awards and recognition program. We've worked both with
18 managers and directors as well as received feedback from the
19 Office of Inspector General. And what I plan to present to
20 you today is an overview of what we're calling our awards and
21 recognition program.

1 You will recall that in our personnel manual
2 currently, we have a special awards initiative. And that
3 awards program allows for the presentation of awards for
4 outstanding performance up to \$500. That is a program that's
5 been in existence for some time now. The program that we're
6 talking about today replaces that program, but yet includes
7 that part of the program that has existed in the past.

8 We have a number of initiatives in the corporation
9 which our employees are implementing. We are in a market in
10 the Washington, D.C. area that is competitive.

11 If you will recall from some of the information
12 that has been shared with you about our comparability study
13 results, while our salaries are generally competitive
14 externally, there are some features which the consultant has
15 recommended that we add to make our salaries more
16 competitive.

17 And one of the things that we're doing to enhance
18 that is the creation of this awards program, which allows for
19 employees to be recognized in several different categories
20 for outstanding performance.

21 Those categories are the Spot Awards, which

1 replaces our current special awards program. The Spot Awards
2 allow for the awarding of cash up to \$500, as does our
3 current special awards program. And this award can be
4 presented by managers and directors directly. It does not
5 have to go through the selection committee, which I will
6 speak with you about very shortly.

7 And any member of a director or manager staff who
8 performs outstandingly, either on a special project or a
9 project of some shorter duration, is eligible with the
10 eligibility period to be recognized on the spot with a cash
11 award.

12 The next award is the LSC Image Award, which
13 recognizes staff for community service which improves the
14 quality of life for the clientele that we serve, specifically
15 the poor and needy, for example, through pro bono work, or
16 through literacy volunteerism and those kinds of things,
17 mentorships. And that award, too, can be awarded up to \$500.

18

19 The third award is the personal achievement award,
20 and the cash range for that award is \$501 to \$1,500. And it
21 recognizes employees who perform exceptionally and improve

1 themselves such that they are better employees or more
2 valuable employees to the corporation, for example, by
3 completing a degree program that helps them bring additional
4 skills to the corporation.

5 And next is the Sustained Excellence Award. And as
6 the name implies, it's awarded to an employee who performs
7 outstandingly for an extended period of time during the
8 eligibility period. And that award ranges from \$1,501 up to
9 \$5,000.

10 And finally, the President's Award recognizes
11 individuals who have performed in an unparalleled way, whose
12 contributions are transcendent and on some special long-term
13 project such as an improvement to the delivery system or
14 developing an innovative project that they've had an
15 opportunity to work on and such that it makes a major
16 difference to the corporation. And that award ranges from
17 \$5,001 to \$10,000.

18 I mentioned to you that the procedure for awards
19 includes, with the exception of the Spot Awards, that
20 nominations can be made by the manager and director and the
21 nominations are then forwarded to the selection committee.

1 On the selection committee sits the president, sits
2 the vice president for programs, the vice president for
3 administration, and the director of administration and human
4 resources serves as an ex officio advisory member to the
5 committee, specifically for facilitating the processing of
6 the nominations and seeing that the connectivity between the
7 nominations process and the final award process occurs.

8 Many different agencies use cash awards as
9 incentives to attract highly qualified employees, to retain
10 highly qualified employees. It is more commonplace in the
11 market now, particularly when you are in a very competitive
12 environment, such as the one that we find ourselves located
13 in.

14 The nature of our work is that we require highly
15 skilled employees in the delivery system, and in this market,
16 the political capital of the world, lawyers and people who
17 are skilled in those areas are much sought after.

18 So we see this as another step in helping us to be
19 able to attract those kinds of employees and to retain those
20 kinds of employees.

21 The eligibility period, or nomination period, is

1 the fiscally year, October 1 through September 30. And the
2 selection committee will meet three times during that
3 eligibility period to review nominations that have been made,
4 and to act upon them.

5 And thereafter, if approved by the selection
6 committee, the awards are made through the assistance of the
7 office of administration and human resources, in conjunction
8 with the controller's office.

9 As I said earlier, this kind of program is standard
10 in the industry. I brought some materials with me today to
11 share with you about the federal government. The Department
12 of Energy has a special awards program too, whereby it awards
13 both cash incentives as well as non-cash incentives. And
14 they award in various categories which include the ones that
15 we award. Personal achievement, for example, they have what
16 they call an on-the-spot award, a performance award, a
17 special act of community service award, and so forth and so
18 on.

19 So I make that point merely to share with you that
20 it is common in the industry in general, it's also common in
21 the federal government. And while we are not able to mirror

1 the programs, because of budgetary constraints here at the
2 corporation, that the federal government has, we do think
3 that, again, this is one step in helping us to be able to
4 attract and retain highly qualified employees.

5 CHAIR BATTLE: Okay. Are there any questions from
6 members of the committee about the program?

7 MR. ERLENBORN: Or comments?

8 CHAIR BATTLE: Or comments?

9 MR. ERLENBORN: I'm not sold on the idea, let me
10 say that. I think it may be a bit too ambitious. I served
11 on the board of a corporation that has an awards program, and
12 there are three people who get the president's award that's
13 determined by the president of the corporation, and then
14 there's one who get the board award. The board of directors
15 makes that determination. No spot awards, just these four
16 awards in the course of any fiscal year.

17 And this corporation has about 4,000 employees.
18 Now I think with a small group of employees that we have,
19 this is a rather ambitious program, and I think there are too
20 many awards.

21 I think maybe the Spot Award, which could be for

1 more than one. I understand that. In the course of the
2 year, there seems to be no limit as to the number of Spot
3 Awards.

4 But it's also made -- a determination by one
5 individual, a supervisor. Just as a suggestion, I think
6 rather than put it through the committee, if the president of
7 the corporation would have to sign off on this, the
8 supervisor could determine that someone is eligible for the
9 award, and the supervisor would make that award subject to
10 the approval of the president of the corporation.

11 And then, as I say, there apparently would be no
12 limit as to the number of those, because the different
13 segments of the administration of this corporation and the
14 various supervisors could make a number of these awards.

15 Just as kind of thinking off the top of my head,
16 maybe there should be some limit in a particular division of
17 the administration, so that you wouldn't have one generous
18 supervisor making a lot of awards in that particular
19 division.

20 And although we may not want to have an absolute
21 number for the entire administration, maybe within a division

1 of the corporation. There should be some constraint with a
2 limitation.

3 And then the other award that I would think would
4 be sustainable is the President's Award. Now, this is my
5 suggestion, but you have the Spot Awards and the President's
6 Award, and forget the others, which seem to, in a way, be
7 awards for something that may not be directly advantageous to
8 the corporation.

9 For instance, the personal achievement award
10 recognizes individual employees for exceptional personal
11 accomplishments attained independently through personal
12 resources which bring benefit to the corporation. A relative
13 college degree? Well, I'm not sure there's a direct relation
14 between obtaining a college degree and an advantage to the
15 corporation. Professional certification? Publication of a
16 book or professional journal?

17 Well, I'm not going to go on and on, but let me
18 just say that would be my suggestion, we only have the two
19 awards, Spot Awards and the President's Award, and not the
20 other two.

21 CHAIR BATTLE: Any other questions?

1 MR. MCCALPIN: I'm sorry, Madame Chair, I have not
2 been goofing off. I have been in a very difficult session.

3 CHAIR BATTLE: Okay. We take that, and we'll give
4 you an excused absence for now.

5 MR. MCCALPIN: The awards program?

6 CHAIR BATTLE: We're dealing with the awards
7 program first now, so what I'd like to do, is let's find out
8 what the present circumstance is with regard to how the
9 corporation, or if the corporation has an awards program, and
10 how it has operated, and whether some of the concerns that
11 have been raised here about the operation of such a program
12 have been experienced, if you can help us with that.

13 MS. KENNEDY: Currently we have what we call a
14 special awards program and it's been in existence for some
15 time. It allows for cash awards of up to \$500. And I've
16 been at the corporation for four years, and in that four-year
17 period, we've seen four cash awards made. Four nominations,
18 four nominations were accepted, four persons were awarded --

19 CHAIR BATTLE: How much do we really have in our
20 budget for awards at present, over the four
21 years --

1 MS. KENNEDY: At this current time, we don't have
2 it budgeted over the four-year period.

3 CHAIR BATTLE: Okay.

4 MS. KENNEDY: The policy allows for the
5 implementation of the program on a year-to-year basis, as
6 budgetary constraints allow. That's very clear in the policy
7 language. This year we've identified \$50,000 maximum for
8 cash awards under the new guidelines that we're developing
9 and proposing to you.

10 Our experience -- I think you make a very important
11 point -- our experience has been that nominations are not
12 rampant. They do not come regularly or routinely from the
13 workplace. I think managers have been judicious in the
14 implementation of the existing policy, and quite frankly,
15 cautious about making those kinds of nominations because I
16 think they realize some of the implications of making several
17 awards, and some of the perceptions that could be created or
18 developed if there's a strong --

19 CHAIR BATTLE: Let me ask a question. Is the
20 present special awards program organized exactly the way the
21 Spot Award is? That is, that it is initiated by an

1 employee's manager and approved by the office director or VP
2 and that's as far as it goes. Is that the way it's
3 organized?

4 MS. KENNEDY: No, it's not exactly organized that
5 way. Right now the special awards program, anyone can
6 nominate. Any employee can nominate any other employee. So
7 the proposal that is contained in this policy guideline
8 narrows the nomination process considerably, and allows only
9 for the director or manager to make nominations for Spot
10 Awards.

11 And there is a standard process for doing that,
12 standard forms, with considerable justification required for
13 even making a Spot Award. So there is some difference. The
14 dollar amounts are the same.

15 CHAIR BATTLE: Okay. Did you have a question?

16 MR. MCCALPIN: I have one question. I worry that
17 at the \$5,000 and \$10,000 level there's more incentive or
18 temptation to do things, but I see that those are awarded to
19 teams. How would you divide an award within a team?

20 MS. KENNEDY: Before I respond directly to that
21 question, a team is not a requirement, it can be an

1 individual or a team.

2 MR. ERLNBORN: I understand that.

3 MS. KENNEDY: But you would divide it equally among
4 the members of the team.

5 MR. ERLNBORN: Even if one person is a leader of
6 the team and the others are members of the team?

7 MS. KENNEDY: Yes. That is the intent.

8 MR. ERLNBORN: I assume that the one nominating
9 could choose either the individual or the team.

10 MS. KENNEDY: Absolutely.

11 MS. WATLINGTON: LaVeeda, I guess I'm still from
12 the feeling that teachers and people in service
13 organizations, I always felt that you're there because you
14 like what you're doing, or doing it because you know you're
15 applying a service. You're not making money there. And
16 today's salaries are much more liveable to me than they used
17 to be. And with the economy the way it is, and you have so
18 many programs being defunded or having to cut there.

19 Well, we've always looked at the top programs as
20 being so different in all ends of it, not just a place where
21 the money's coming in. The people in the field are doing the

1 work, you know, as the money comes through. And when you see
2 that top level having that kind of money, letting those
3 attorneys just out there working with the clients, you know,
4 getting money for the programs, you know, there's not enough
5 people there that I find these kind of programs kind of
6 difficult to even have their existence.

7 I mean I guess just the way I look at it. You
8 don't change some things.

9 MS. KENNEDY: I understand.

10 CHAIR BATTLE: We've had two at least thoughts from
11 board members. One is that we look at the program and maybe
12 streamline it to consider Spot Awards and the Presidential
13 Awards as opposed to --

14 MR. MCCALPIN: That's true. I came in as John was
15 making that proposal.

16 CHAIR BATTLE: Right, right.

17 MR. MCCALPIN: Which two did you suggest?

18 CHAIR BATTLE: I was just about to tell you. It's
19 the Spot Award for extraordinary performance and the
20 President's Award. And so that you would have the
21 opportunity for, you know, a spot cash award for an excellent

1 or extraordinary performance, and then for those transcendent
2 and unparalleled activities, the President's Award would be
3 awarded.

4 And the President's Award as presently designed
5 would go before the committee, and the Spot Award would not
6 be required to go before the committee, is the way that
7 that's organized. That's at least one proposal.

8 Then Ernestina has basically said she doesn't
9 believe in these kinds of programs and people make their
10 money --

11 MS. WATLINGTON: But if it's something workable.
12 But \$10,000, I think, is an awful lot of money when you're
13 talking about our budgets and that type of thing, just for an
14 incentive to do your job better.

15 CHAIR BATTLE: But you've got a team, as well as
16 individuals, so probably the way that that's designed is so
17 that if there's a team that has worked on something, you
18 would be able to have sufficient dollars to divide it up
19 among those members of the team.

20 MR. ERLNBORN: That might explain the reason that
21 I suggest those two and not the other two. Those two are

1 directly related to the job performance here in the
2 appropriation. The other two can be pro bono work, literacy
3 tutoring, mentorships, and so forth, which is apart from job
4 performance.

5 The other one, personal achievement, could be
6 getting a college degree, or things like that. Again, apart
7 from performance on the job. So that was really the
8 reasoning that I had in choosing the Spot Award and the
9 President's Award.

10 CHAIR BATTLE: Let me, John, I'd like to just say
11 particularly about the image award, that one of the things
12 that I think Legal Services has worked hard to do in order to
13 multiply the effect of its ability to reach as many clients
14 as possible has been to encourage pro bono activity in the
15 private sector.

16 And so I can see a job-related connection between
17 awarding that kind of conduct within our own offices, if we
18 are to encourage law firms and other people to value that as
19 part of how they do their work. So they're --

20 MR. MCCALPIN: Yes, but the law firms don't get any
21 additional compensation for pro bono. They consider it as

1 part of the regular obligation of the members of the bar in
2 that firm.

3 CHAIR BATTLE: That may be true, but I guess what
4 I'm saying is, in terms of whether it is job-related, that
5 was particularly the point that he was making, whether this
6 particular award is job-related. I can see that doing
7 something to recognize someone for doing that because we do
8 raise that issue, makes it job-related, in my view.

9 MR. MCCALPIN: But suppose you have everybody here
10 on the staff doing pro bono? Are you going to give it to all
11 of them?

12 CHAIR BATTLE: I think it's for extraordinary
13 performance, so you --

14 MS. KENNEDY: That's how it's set up.

15 MR. MCCALPIN: "Personal, voluntary community
16 service to improve the quality of life for the poor." So
17 every member of the staff that did pro bono work would be
18 entitled to that award.

19 MS. KENNEDY: The intent of the policy is, just as
20 Ms. Battle suggested, that it's for outstanding and
21 exceptional performance --

1 MR. MCCALPIN: It doesn't say that.

2 MS. KENNEDY: -- around. It doesn't say that, but
3 that is the intent. And so that is an area where we need to
4 make that clear in the language.

5 CHAIR BATTLE: Well, did you have any -- I'm sorry,
6 I didn't mean to --

7 MS. KENNEDY: That's okay.

8 CHAIR BATTLE: Did you have any other comments
9 about the program? Have you had a chance to review it?

10 MR. MCCALPIN: Well, it's the same comment that I
11 made yesterday, and that is I think you're being optimistic
12 that it will be more helpful than divisive.

13 MS. KENNEDY: May I just add a couple of other
14 things?

15 CHAIR BATTLE: Okay.

16 MS. KENNEDY: I want to speak to Mr. Erlenborn's
17 point about no limit on-the-spots. There is a ceiling of 20
18 percent to 25 percent per office. That's in the language
19 earlier, under administrative guidance on page three.

20 MR. ERLBORN: That would be 25 percent of the
21 staff?

1 MS. KENNEDY: Of that division, of that office,
2 yes. So there is a ceiling there.

3 And then the other thing, the other point that I
4 wanted to share with you is that this program is intended to
5 be implemented only when budget permits. So there is the
6 flexibility, if the budget does not permit it, that the
7 program may not be implemented.

8 And finally, as we shared on yesterday, there is no
9 requirement that an award be made in each category that
10 exists annually. So if there is not someone who performs up
11 to the criteria that are listed -- for example, in the
12 President's Award, there may not be an awardee in that
13 category. So it requires a lot of -- it relies a lot on the
14 judgement of the selection committee, the president, the vice
15 president, upon the advice of human resources. And that
16 flexibility does exist.

17 So it is not intended that there will be a
18 guaranteed awardee in each program from year to year. It's
19 intended that management will study the program, will review
20 it each year, annually, and will be reported to the board.

21 So this program has built into it the opportunity

1 for the board to review its operations and to make
2 recommendations or requirements for change upon that review
3 and the provision of that information.

4 MR. ERLENBORN: Would there be contemplated a
5 budgetary allocation for Spot Awards separate from the
6 others?

7 MS. KENNEDY: Yes, exactly, but not this year.
8 Because we are just now proposing to implement the program,
9 we did not have an opportunity to budget for the Spot Awards
10 in this current fiscal year. So we're looking to see the
11 experience of this first year of implementation and use that
12 as a base line for budgeting for 2001. So yes, there is an
13 expectation that there will be a separate budgetary allotment
14 in that office budget for the Spot Awards program.

15 MR. ERLENBORN: I can see the pros and cons to
16 that. Number one, I think it is good that there would be a
17 limitation, monetary limitation, for the Spot Awards, a
18 budgetary allocation.

19 On the other hand, if it's solely within the
20 discretion of the manager, there might be the tenancy to make
21 these awards early in the year, before the budget runs out.

1 MR. MCCALPIN: Or to then make sure you expend 100
2 percent of the budget.

3 MR. ERLNBORN: Yes, but each manager will not have
4 an allocation, as I understand it. It would be just overall
5 allocation for Spot Awards?

6 MS. KENNEDY: No, no. Each office will
7 have --

8 MR. ERLNBORN: Oh, each office will have a
9 seperate -- I see.

10 MS. KENNEDY: That's the expectation.

11 MR. MCCALPIN: So there wouldn't be that tendency
12 to be in competition with other divisions of the --

13 MS. KENNEDY: I wouldn't expect so. I think our
14 managers will be judicious in their use of the funds that are
15 made available for the Spot Awards. And I say that based
16 upon the experience of the last several years with the
17 existing special awards program, which in general mirrors the
18 Spot Awards program. We have not found that to be the case.

19 But of course, as I said again, and again, we will
20 be reviewing this closely, we will be looking at it at the
21 end of the year, we'll be making reports to the president,

1 we'll be making reports to the board about its operations,
2 and then if we need to step back and adjust some things, and
3 we'll have an opportunity to do that on an ongoing basis.

4 CHAIR BATTLE: So essentially where we are, the
5 corporation already has an award program -- we'll call it
6 special award program -- and we have a proposal before us to
7 expand that program to include a number of other awards
8 beyond the special award.

9 And I'm hearing feedback from members of the
10 committee about this expansion of the awards program. Are
11 there any other questions about this, or are we prepared to
12 vote on this? We need to vote if we're to implement this at
13 this meeting. What I'm hearing is some significant revision
14 may, if done, secure an expansion of the program from the
15 existing special awards program, but that it may make sense
16 to take into account the discussion that we've had here today
17 and to come back with a program that includes some of the
18 thoughts from the board, maybe at the next board meeting.

19 And the effect of that would be, unfortunately,
20 that we wouldn't have a program for this year, but we would
21 be able to get it implemented for later on in this fiscal

1 year. Am I hearing that correct, or --

2 MS. WATLINGTON: Also, like don't we have, within
3 our employment practice, that -- what is it -- the awards or
4 raises that is given for if you do a good job, or --

5 MS. KENNEDY: Well, merit increases are completely
6 separate from these cash awards.

7 MS. WATLINGTON: I know that, but don't we already
8 have -- but do we have one set up in our --

9 MS. KENNEDY: We do, I think we do.

10 MS. WATLINGTON: Okay, so you know, it's -- that's
11 an incentive to do your job good.

12 MS. KENNEDY: That is, that's right.

13 MS. WATLINGTON: Still questioning the sense of an
14 award program along with that.

15 CHAIR BATTLE: Well, we have an existing awards
16 program, I think the question is --

17 MS. WATLINGTON: Right, but --

18 CHAIR BATTLE: The question is whether we will
19 expand this awards program to include these areas.

20 At least my thoughts are that I think that the Spot Award,
21 the Image Award, the Sustained Excellence Award, and the

1 President's Award have merit. The concern about the budget,
2 I think, is a legitimate one, in terms of how much money we
3 have available in order to make awards in different areas.

4 And we may need to revisit and reconstruct a
5 program that the board would accept, that takes into account
6 the discussion that we've had today and how to present --

7 MS. KENNEDY: May I just make one clarification
8 about the budget?

9 CHAIR BATTLE: Okay.

10 MS. KENNEDY: Funds have already been identified
11 for Fiscal Year 2000 to accommodate the awards program.

12 CHAIR BATTLE: Okay.

13 MS. KENNEDY: So there are no budgetary constraints
14 for the program that we've identified for this current year.

15 And of course, each year, as we go into the fiscal year, we
16 would have to re-evaluate and determine if, in fact, there
17 are funds available during that year to implement the awards
18 program.

19 But the constraints which may exist for this year
20 are not related to the budget, and therefore we had hoped
21 that if the board were to approve this program, we could go

1 ahead and begin to implement in whatever format was approved,
2 the awards for this year, and we had expected to be able to
3 do that within the first nomination period, which would be by
4 the end of this calendar year.

5 CHAIR BATTLE: Okay, well I at least heard from
6 John Erlenborn a proposal which would include the Spot Awards
7 and the presidential award. Is there any other suggestion
8 about --

9 MR. MCCALPIN: I'd be more comfortable with the
10 monetary value if the President's Award was \$5,000 instead of
11 \$10,000.

12 MR. ERLNBORN: I would agree.

13 MS. WATLINGTON: I would agree to that.

14 CHAIR BATTLE: Well, what about teams? Are you
15 setting a \$5,000 max for individuals and if you're awarding a
16 team, the team would then split up the \$10,000?

17 MR. MCCALPIN: No, the \$5,000.

18 CHAIR BATTLE: Split a \$5,000?

19 MR. MCCALPIN: Well, but I'm just making this
20 comment with respect to the suggestion that John made.

21 CHAIR BATTLE: Okay, okay. John, I think what I'm

1 hearing is in order to meet the fiscal realities of what
2 we're trying to do, if we have a proposal that we can accept
3 today, then it makes sense to go forward with that, rather
4 than have it completely revamped.

5 MS. KENNEDY: Yes.

6 CHAIR BATTLE: Is there anything else about this
7 program that we need to look at? The types of awards is what
8 our discussion is focused on the most. Is there anything
9 else about it?

10 MR. MCCALPIN: Well, yesterday we raised the issue
11 of to whom the program ought to be available, and I think
12 there was some unease about making a \$5,000 or \$10,000
13 available to highly paid employees, employees who are highly
14 paid anyway.

15 But I think that was just a concern that was raised
16 yesterday, and we were told that it's applicable to everybody
17 except, I assume, the president, who's already at the
18 compensation limit.

19 And I suppose if there's only very little room
20 between the compensation of the IG and the statutory limit.

21 MS. WATLINGTON: There's a committee that also --

1 other than just the -- there's someone else that they'd have
2 to take it through to make the --

3

4 CHAIR BATTLE: Awards committee, yes.

5 MS. KENNEDY: The selection committee includes the
6 president, the vice president for programs, and the vice
7 president for administration. Those are the three voting
8 members of the selection committee.

9 Presumably by the time it gets to the selection
10 committee, however, it has gone past the manager and the
11 director, and each of them has approved it and then it's
12 finally at the point where the selection committee is
13 essentially reviewing the recommendation of the director and
14 the manager.

15 MR. MCCALPIN: I assume it's clear that the
16 selection committee could not vote to award this to one of
17 the members of that committee.

18 MS. KENNEDY: No, that is not clear. If the
19 president nominates one of the vice presidents for an award,
20 then the decision of the president is final in that instance.

21 MR. MCCALPIN: Oh, no. No, no, no.

1 MR. ERLNBORN: How about excluding corporate
2 officers?

3 MR. MCCALPIN: That has some appeal. I haven't
4 thought of all the implications of it, but it has some
5 appeal.

6 And let me say this. I certainly don't want to
7 leave in the hands of the president alone the right to make
8 this award to a vice president.

9 MS. WATLINGTON: He makes a final decision --

10 MR. MCCALPIN: Pardon?

11 CHAIR BATTLE: After a selection committee did.

12 MS. WATLINGTON: -- after the selection committee
13 will review and forward a document and make recommendations
14 for award approval, then the president will make a final
15 decision. But it's very important who's on that selection
16 committee.

17 MR. ERLNBORN: Well, as to corporate officers,
18 that really is --

19 MR. MCCALPIN: Four vice presidents, the treasurer
20 --

21 MS. KENNEDY: That's it. The four vice presidents

1 and the controller/treasurer.

2 MR. MCCALPIN: And the president.

3 MS. KENNEDY: And the president.

4 CHAIR BATTLE: Those are all the officers, right?

5 MR. FORTUNO: The vice presidents, the president,
6 the secretary, and the treasurer.

7 MR. MCCALPIN: Well, but the secretary and the vice
8 president were the same office. The IG is not a corporate
9 officer.

10 MR. FORTUNO: No.

11 CHAIR BATTLE: How would this work, with respect to
12 the IG's office? I assume with the selection committee, that
13 the IG would make a selection for the OIG, but will the OIG,
14 will the office have a selection committee as well?

15 MS. KENNEDY: I will defer to Laurie on that,
16 because I think they're working on their own setup procedures
17 for implementation.

18 MS. TARANTOWICZ: Good morning. We don't have a
19 formal -- I don't think we have a process that covers the
20 OIG, but we contemplated using the awards program, and of
21 course given the situation, we would be using the selection

1 committee as outlined here, because it wouldn't be
2 appropriate for management --

3 CHAIR BATTLE: Sure, we understand that, but we
4 were wondering what you were going to do in the IG shop on
5 this.

6 MS. TARANTOWICZ: As far as who would be on the
7 committee?

8 CHAIR BATTLE: Yes. How do you do your special
9 awards now? I mean, in other words, there's a program
10 already in place that allows for selection of people to
11 receive special awards.

12 MS. TARANTOWICZ: I don't recall recently a special
13 award being awarded within the OIG. I believe under the
14 current -- I mean, it hasn't happened, so it's hard to say.

15 CHAIR BATTLE: Sure, I understand.

16 MS. TARANTOWICZ: I mean, I know it's happened in
17 the past, and I think that it was recommended either by the
18 direct supervisor and approved by the IG, or if the IG is the
19 direct supervisor, just approved by the IG.

20 CHAIR BATTLE: It would be important for us to know
21 exactly how that's going to be organized, so that the board,

1 just as it's voting on the management's proposal with regard
2 to how to organize this awards program, could vote on the
3 proposal as to how the IG would organize its awards program
4 as well.

5 MS. TARANTOWICZ: I would imagine if, in management
6 it was going to be the president and the vice presidents, it
7 would be the IG and the assistant IGs in the OIG.

8 CHAIR BATTLE: But you all don't have a program as
9 of yet, so it's in progress. When you get it, let us see it.

10 MS. TARANTOWICZ: Oh, I'm sorry, we weren't under
11 the impression that we had to draft our own, but we can do
12 that.

13 CHAIR BATTLE: Well, I guess what I'm saying is
14 however you organize your selection committee so that it's
15 clear, I think this is going to ultimately go in our manual,
16 and it needs to be clear how that whole process takes place,
17 corporation-wide. So we do need to have that.

18 MS. TARANTOWICZ: I should also say that the IG has
19 determined that if the five categories of awards listed here
20 are approved by the board, that his intention would be not to
21 award an Image Award or a Personal Achievement Award for

1 reasons similar to those that Mr. Erlenborn stated earlier.

2 MS. WATLINGTON: I think we've eliminated those
3 two.

4 CHAIR BATTLE: Those two are really not under
5 discussion right now. I think we have under discussion the
6 special award and the President's Award, those two.

7 MR. MCCALPIN: Spot.

8 CHAIR BATTLE: Spot, it's Spot to replace the
9 special, I'm sorry, Spot Award.

10 MS. KENNEDY: And is it also under consideration
11 the Sustained Excellence? There are five, and I understand
12 that you eliminated two, the Image and the Personal
13 Achievement. That leaves the Sustained Excellence, the Spot
14 Award, and the President's Award. Is that correct?

15 MR. MCCALPIN: I think John's suggestion was only -
16 -

17 MS. WATLINGTON: His suggestion was just the two.

18 MS. KENNEDY: Okay.

19 MR. ERLBORN: I don't think I was really clear.
20 I was talking about eliminating two.

21 The Sustained Excellence Award and the President's

1 Award seem to me to be pretty much the same thing, however,
2 based on the same sort of performance.

3 And I can't say that I've clearly decided whether
4 we ought to have both of them or combine them into the
5 President's Award.

6 MS. KENNEDY: Well, the intent is that they be
7 considerably different. The Sustained Excellence is award is
8 generally for outstanding performance of your regularly
9 assigned duties and responsibilities, whereas the President's
10 Award is intended to be applied to special projects,
11 innovative projects that may not be a part of your routine
12 day-to-day duties and responsibilities, but some special
13 project, one-time project, that may have lasted over a
14 sustained period of time, however.

15 CHAIR BATTLE: It looks like what's happened is the
16 Sustained Excellence Award and the President's Award for
17 different performance items.

18 MS. KENNEDY: Yes.

19

20 CHAIR BATTLE: But the amounts are about the same,
21 based on what's being recommended.

1 MS. KENNEDY: Well, actually --

2 MR. MCCALPIN: Well, let me ask you, I don't
3 remember what are the different marks that you get in the
4 performance review, but what's the top one?

5 MS. KENNEDY: Exceeds fully successful.

6 MR. MCCALPIN: Would you think that everybody that
7 gets that mark gets the Sustained Excellence Award?

8 MS. KENNEDY: No, no, that is not the intent of the
9 program. The intent of the program is that some outstanding
10 performance above and beyond what's implied in the
11 performance management system, the performance appraisal
12 system, is what would warrant consideration for Sustained
13 Excellence Award. So they're not intended to lay over on top
14 of each other.

15 M O T I O N

16 MR. ERLNBORN: To help bring this to a conclusion,
17 let me move, if that would be in order at this time, to
18 approve the program, with the exception of the Image Award
19 and the Personal Achievement Award.

20 I would also like to move to -- and I offer this
21 secondly -- I'd like to move to exclude corporate officers

1 from the program. They're, in a way, they're the ones that
2 are going to be making the final determination anyhow.

3 CHAIR BATTLE: Okay.

4 MS. WATLINGTON: Is that also the \$5,000?

5 MR. ERLNBORN: Well, let me just offer the one to
6 exclude the Image and Personal Achievement Awards, and then
7 I'll offer that other one separately.

8 MS. WATLINGTON: I will second that.

9 CHAIR BATTLE: Okay. You've heard the motion. All
10 in favor?

11 (Chorus of ayes.)

12 CHAIR BATTLE: All opposed?

13 (No response.)

14 CHAIR BATTLE: All abstentions?

15 (Laughter.)

16 CHAIR BATTLE: All here?

17 MR. MCCALPIN: Well, you know, I would approve,
18 just reserving the right to vote against the whole thing when
19 it comes up.

20 CHAIR BATTLE: Okay. Well, a majority of the
21 members of the committee have voted to exclude to adopt the

1 award recognition program with the following modifications to
2 it: that we would exclude the Image Award and the Personal
3 Achievement Award, and that corporate officers would be
4 excluded from consideration for the awards.

5 MR. MCCALPIN: I thought he was going to make that
6 separate.

7 MR. ERLENBORN: Let me offer that separately.

8 CHAIR BATTLE: Oh, okay.

9 MR. ERLENBORN: It probably will get the same vote,
10 I guess.

11 CHAIR BATTLE: Okay.

12 MR. ERLENBORN: Rather than spending --

13 CHAIR BATTLE: Oh, I'm sorry. So these are two
14 separate motions. I'm sorry.

15 MR. ERLENBORN: Yes, all right.

16 CHAIR BATTLE: I didn't do that correctly.

17 MR. ERLENBORN: Better give people an opportunity
18 of voting opposite ways on those two.

19 M O T I O N

20 But anyhow, I would move now to exclude corporate officers.

21 And for, I think, a very good reason. If the corporate

1 officers, who are already the highest paid, get these awards,
2 I don't think it necessarily would set very well with the
3 other people in the corporation who are not as highly
4 compensated.

5 CHAIR BATTLE: Okay, it's been properly moved. Is
6 there a second?

7 MS. WATLINGTON: I'll second.

8 CHAIR BATTLE: Okay, we moved and seconded that the
9 awards program be recommended to the board with the express
10 caveat that corporate officers would be excluded from
11 consideration under the awards program.

12 All in favor of that motion?

13 (Chorus of ayes.)

14 CHAIR BATTLE: All opposed?

15 (No response.)

16 CHAIR BATTLE: Motion carries.

17 MR. ERLNBORN: Let me just say this. I don't
18 know, Bill, if you want to do anything about the President's
19 Award. I'm of two minds about that. Monetary limitation --

20 MR. MCCALPIN: Well, if you've got the other one in
21 at \$5,000, maybe you want to have some monetary differential

1 between them.

2 I thought that you were only going to have the Spot
3 and the President, and nothing in between, when I said that I
4 thought it ought to go down to \$5,000.

5 But if you're going to have both of them, and I can
6 see a reason for a monetary differential.

7 MR. ERLNBORN: Let me just finally say that I
8 think the board should and will take a special effort to
9 monitor the implementation of this over the course of the
10 next year or so. I think there's some reluctance on the part
11 of some of us, but --

12 CHAIR BATTLE: I'd like to also say that the board
13 really does appreciate the work and performance that is over
14 and above the call of duty, and we have seen that happen on
15 many occasions in some of our darkest hours over the last six
16 years.

17 The fact that the existing awards program, which
18 allows for special awards and special cash amounts of \$500 to
19 employees has been implemented over the last four years at
20 least, only in four instances, tells me something about how
21 judicious the staff will probably be if we have a more

1 expanded program which will allow for awards.

2 But I certainly would applaud our human resources
3 person and also the staff for the work that has been done,
4 for the vision to see that it is important, that people be
5 rewarded other than with their salaries for the work that
6 they do that is really outstanding and above the call of
7 duty.

8 So with that, and with the point that I think Mr.
9 Erlenborn just made about the fact that we do want to monitor
10 this and make sure that it is a positive impact and not one
11 that creates a problem for our employees, I think that's
12 where we are on this program.

13 MS. WATLINGTON: I just wanted to say, I think
14 people know where I'm coming from. If I change that -- we do
15 what we do and we don't know what money is. You have to be
16 there and in the trenches every day, as I am, to know, and
17 I'm also applauding the field, because they're the ones
18 that's there in the trenches doing all that work all the
19 time, and they don't even get the amount of salaries they
20 should be getting. But the corporation staff is doing a lot
21 for their clients and the clients that the -- everything,

1 people, and in the community.

2 Things are getting worse, not better, so I just
3 advocate that way and I hope the time comes when I don't have
4 to feel that way, but it isn't that I don't admire or
5 appreciate the staff and their commitment.

6 MS. KENNEDY: We thank you for your support. And
7 we certainly will keep you both informed and involved
8 throughout this process.

9 There was one clarification I'm seeking with
10 respect to the inspector general. Laurie and I were a little
11 bit unclear about that. Is the inspector general omitted
12 along with the corporate officers, or not?

13 MS. TARANTOWICZ: He's not covered by your --
14 obviously, he wouldn't nominate himself for an award and he
15 wouldn't take an award, just wanted to clarify.

16 CHAIR BATTLE: Why don't we do that, just to
17 exclude the inspector general as well?

18 MR. ERLNBORN: Yes, I think that it's probably not
19 necessary, but I think it has good publicity value.

20 MS. KENNEDY: Thank you very much.

21 CHAIR BATTLE: Let's take a vote on that inspector

1 general motion as well.

2 M O T I O N

3 MR. ERLNBORN: I'll so move.

4 MS. WATLINGTON: Second.

5 CHAIR BATTLE: Okay. It's been properly moved and
6 seconded that we also exclude the inspector general from
7 consideration for the awards recognition program. All in
8 favor?

9 (Chorus of ayes.)

10 CHAIR BATTLE: All opposed?

11 (No response.)

12 CHAIR BATTLE: Let me just clarify for the record
13 what it is I think we have now voted on and what it is we're
14 going to recommend to the board on tomorrow. And that is
15 after our careful review of the awards and recognition
16 program proposal that's been made to the board, that this
17 committee would recommend tomorrow to the board the adoption
18 of the awards and recognition program with the following
19 changes to it.

20 One, that the program would exclude the LSC Image
21 Award and the Personal Achievement Award.

1 Two, that the awards program would exclude
2 corporate officers and the inspector general.

3 MR. ERLNBORN: Could I ask, just for
4 clarification, what are the corporate officers? I think --
5 was there only four?

6 CHAIR BATTLE: The vice presidents,
7 president --

8 MR. MCCALPIN: President, four vice
9 presidents --

10 CHAIR BATTLE: -- secretary and treasurer.

11 MR. ERLNBORN: Oh, okay. And that --

12 MR. MCCALPIN: And the secretary is also a vice
13 president. So they're not two separate individuals.

14 MR. ERLNBORN: At this time.

15 MS. WATLINGTON: And the human resources, they
16 administer the program?

17 MS. KENNEDY: Human resources will serve as
18 advisory to the selection committee.

19 MS. WATLINGTON: No, no, the selection committee
20 act in the place of the --

21 MS. KENNEDY: Ex officio.

1 CHAIR BATTLE: One thing that I'd like to mention,
2 we've approved the program, so the program itself can go
3 forward. But I also know that we are going to be looking at
4 the personnel manual later on down the line.

5 At that point in time, I really would like to see
6 the selection committee's section, as it pertains to the
7 inspector general, clarified so we know exactly how that
8 process is going to work.

9 MS. KENNEDY: Sure.

10 MR. ERLENBORN: Let me ask this for clarification.
11 The Office of Inspector General implementing this program,
12 will they use funds allocated to that office, rather than
13 general project funds?

14 MS. TARANTOWICZ: Yes, of course.

15 MR. ERLENBORN: All right. Okay.

16 MS. KENNEDY: Thank you very much.

17 CHAIR BATTLE: Any other questions? Thank you very
18 much. We have next on our agenda -- we waited, Bill, for
19 you, before we approved our minutes because we wanted to make
20 sure that if you had any corrections or suggestions for
21 changes to our minutes, that you were present.

1 You should have in your board book a copy of the
2 committee meeting's minutes for the meeting on June 11, 1999.

3 MR. MCCALPIN: Yes, on the third page of the
4 minutes, which has a five in the lower right-hand corner, the
5 motion says that I moved .1641 as amended by the committee.

6 The problem is that the preceding paragraph does
7 not really amend. It says, "Ms. Tarantowicz suggested the
8 following changes. Board clarified the definition -- in
9 addition, to clarify the following --" but there's no action
10 amending, so that the motion which says we approve the
11 amended motion, the amended part, it doesn't refer to an
12 actual amendment.

13 CHAIR BATTLE: Okay. I think the process that we
14 have used -- and Suzanne, will you help me with this?

15 We have, in our deliberations, suggested changes to
16 the language of a proposed rule when we'd gotten it, and made
17 it clear to the staff what those changes are, and then moved
18 for the adoption, subject to those changes.

19 Now, I don't know that we have ever voted on every
20 single change, Bill, I just --

21 MS. GLASOW: It might help if you just change the

1 word to revised, because you're in the process of making the
2 revisions one by one, and then you vote on it at the end, so
3 --

4 MR. MCCALPIN: Yes.

5 MS. GLASOW: -- it's the end vote that actually
6 amends everything that you've changed in the language.

7 CHAIR BATTLE: So use the word revised?

8 MS. GLASOW: Would that help, Bill?

9 MR. MCCALPIN: Yes.

10 CHAIR BATTLE: Okay. All right. Please don't make
11 us vote on every single "and" and "or."

12 MR. MCCALPIN: No. On the following page, three,
13 four, five lines down, this, "Ms. Kennedy recommended the
14 board approve an amendment that would increase the level of
15 employer contribution."

16 Is that what we're talking about, an employer
17 contribution level to the plan? It seemed to me that that
18 left some ambiguity, unless we said, "increase the level of
19 employer contribution to the plan."

20 CHAIR BATTLE: You're suggesting that we say
21 increase the level of employer contribution to the plan?

1 MR. MCCALPIN: To the LSC 401 --

2 CHAIR BATTLE: Okay, we can do that.

3 MR. MCCALPIN: Then it says, "The contributions
4 level to 8.51 percent." Of what?

5 MR. ERLNBORN: I'm trying to recall now -- I think
6 that refers to --

7 CHAIR BATTLE: Of the employee contribution.

8 MR. ERLNBORN: -- that's of the employee's --

9 CHAIR BATTLE: Contribution.

10 MR. ERLNBORN: Contribution --

11 CHAIR BATTLE: Right.

12 MR. ERLNBORN: -- to the plan.

13 MR. MCCALPIN: Or employee compensation.

14 MR. ERLNBORN: Contribution.

15 CHAIR BATTLE: Contribution?

16 MR. MCCALPIN: Compensation.

17 MS. WATLINGTON: Compensation.

18 CHAIR BATTLE: Compensation.

19 MR. MCCALPIN: Base compensation --

20 MR. ERLNBORN: Oh, this is the base allocation,
21 not the one that's tied to the contribution that the employee

1 makes? There are two. There's an automatic allocation to
2 the 403(b) plan, and then if the employee chooses to make an
3 additional contribution, then there is an additional
4 contribution made by the employer, a magic contribution.

5 MR. FORTUNO: And I think the two combined could go
6 as high as 8.51 percent.

7 CHAIR BATTLE: Joan was the one that presented this
8 to us. Do we need clarification from her? Because I think
9 your point is well taken. We need the minutes to reflect
10 what that 8.51 percent relates to.

11 MR. ERLENBORN: I think that this should say it. I
12 think this is a good point, Bill. It should say the maximum
13 contribution level. It's not automatically the 8.51 --

14 CHAIR BATTLE: Employer's maximum.

15 MR. ERLENBORN: -- it's the maximum contribution
16 cannot exceed 8.51 percent of the employee's compensation.

17 MR. FORTUNO: Right, correct.

18 MR. ERLENBORN: Now, is that total compensation?
19 Would that include overtime and various other things, or is
20 it just the base compensation?

21 MR. FORTUNO: Base compensation.

1 MR. MCCALPIN: Base compensation? So the employee
2 may actually get more compensation in a year than the base
3 compensation?

4 MR. FORTUNO: And it would not include special
5 awards --

6 MR. ERLNBORN: fringe benefits --

7 MR. MCCALPIN: Like this bonus that we're talking
8 about.

9 MR. FORTUNO: Pardon?

10 MR. MCCALPIN: Like this bonus that we've just been
11 talking about?

12 MR. FORTUNO: It's just a base compensation.

13 MR. ERLNBORN: Maybe we should add that.

14 MR. MCCALPIN: Yes.

15 CHAIR BATTLE: Employee's base level of
16 compensation?

17 MR. MCCALPIN: Base, yes.

18 CHAIR BATTLE: Okay, so the change would read, "Ms.
19 Kennedy outlined the proposal and explained the necessity of
20 increasing the employer's maximum contribution level, so that
21 it cannot exceed 8.51 percent of the employee's base

1 compensation.

2 MR. MCCALPIN: I think that's correct.

3 MR. ERLNBORN: I think that does it.

4 CHAIR BATTLE: Okay.

5 MR. MCCALPIN: I think that does it.

6 CHAIR BATTLE: Any other changes to the minutes?

7 (No response.)

8 M O T I O N

9 CHAIR BATTLE: Okay, and with those corrections, I
10 will entertain a motion to approve the minutes of the
11 committee meeting of June 11, 1999.

12 MR. ERLNBORN: So moved.

13 MR. MCCALPIN: Second.

14 CHAIR BATTLE: Properly moved and seconded. All in
15 favor?

16 (Chorus of ayes.)

17 CHAIR BATTLE: All opposed?

18 (No response.)

19 CHAIR BATTLE: Motion carries. Okay, we
20 now --

21 MR. ERLNBORN: Thank you, Bill, for your

1 contribution.

2 MR. MCCALPIN: Thank you for waiting.

3 (Laughter.)

4 CHAIR BATTLE: We can now move to, I guess,
5 consider and act on -- we've got two regulations. We've got
6 the timekeeping regulation and recipient fund balance. Why
7 don't we start with timekeeping, 45 CFR 1635, the timekeeping
8 requirement.

9 MR. ERLNBORN: What's the page number --

10 CHAIR BATTLE: Timekeeping?

11 MS. GLASOW: Twenty-seven.

12 MR. ERLNBORN: Twenty-seven?

13 CHAIR BATTLE: Twenty-seven.

14 MR. ERLNBORN: Thank you.

15 CHAIR BATTLE: Suzanne, would you come to the
16 table, please? Because I think in order for us to get
17 through this, we're going to need your help.

18 Is there someone from CLASP working on this as
19 well?

20 MR. PERLE: Yes.

21 CHAIR BATTLE: Linda, would you come forward?

1 MR. ERLNBORN: Bill, would you like a folder?

2 MR. MCCALPIN: No, I specifically reject them.

3 (Laughter.)

4 MR. MCCALPIN: I don't want to have to carry them
5 around. That's why I have all this in one file on 1635.

6 CHAIR BATTLE: We have judiciously seen timekeeping
7 requirement many times over the last six years, and we have
8 now probably our final revision to this, based on an issue
9 that came up during the audit process.

10 And we have a couple of issues that I think were
11 presented through the comments that we received on this, and
12 we need to hear about what they are, so that we can make a
13 final decision on this one. Okay?

14 MR. FORTUNO: I think the Chair is correct. You've
15 seen this rule any number of times. I think the rule was
16 republished so that a proposal to require attorneys and
17 paralegals to provide a date, in addition to the time span,
18 which is not something which had heretofore been required,
19 was published and comments were received to that.

20 In addition, and possibly more significantly, the
21 proposed rule asks that part-time attorneys and paralegals

1 who work for the program and engage in restricted activities
2 submit a certification concerning the time spent on the
3 program's work and time spent on restricted work -- or just
4 the program work, not the restricted work.

5 MS. GLASOW: It's if they're working part-time for
6 another organization. They have to certify that while
7 they're being compensated by the recipient, that they have
8 not engaged in any restricted activity.

9 CHAIR BATTLE: Okay.

10 MR. FORTUNO: And there is, in the proposal, an
11 exception for de minimus activity, which we can get to as we
12 approach that point in the regulation itself.

13 I don't know how the Chair would propose to
14 proceed, whether just taking up the revisions one by one as
15 they occur in the regulation?

16 CHAIR BATTLE: I think that makes sense, because
17 we've already approved everything else in the regulation, and
18 the only issue before us right now is the issue of how we're
19 going to address this issue of certification for part-time
20 work.

21 MS. GLASOW: And we did it in the footnotes, as you

1 requested.

2 CHAIR BATTLE: Yes. Okay, I've got a warped member
3 with a dissent.

4 MR. MCCALPIN: Every time you go through it, you
5 know, we think of something else, but let me ask you, in
6 connection with 1635.(2)(B), in the last full line, we have
7 PAI recruitment. And previously we talked about a case --
8 what about working with a PAI in education program,
9 assisting, because PAIs do other things than direct
10 representation of plants.

11 Is that covered in the language of community
12 education presentations -- not necessarily presentation --
13 providing, implement, develop written materials, and so on.
14 Do we include as a matter assisting a private attorney in a
15 non-case situation?

16 MS. GLASOW: I think we would, because for one
17 thing, these are examples. They're not all --

18 MR. ERLNBORN: Not limitations.

19 MS. GLASOW: Inclusive, right. And since community
20 legal education and general supervision of program services,
21 et cetera, all of these would be a matter because it's clear

1 that a case is defined as giving direct legal assistance to
2 somebody.

3 MR. MCCALPIN: And then right after that we'll use
4 the work intake. Does that necessarily include referral to a
5 PAI, to another service agency? Or does intake simply taking
6 it into the program, or does it also include referral out of
7 the program?

8 And there may be some involved in that. You may
9 have to look around for another service agency to assist the
10 client. You may have to spend some time, and I know they do
11 spend time trying to find a private attorney who will take
12 the case by referral. So that does intake include referral?

13 CHAIR BATTLE: I think it does. My view, at least,
14 is that the only limitation on intake here is when no case is
15 undertaken. All other intake is a matter.

16 MR. MCCALPIN: But is it intake if you don't really
17 take it in to the program, but just send it out?

18 MR. ERLNBORN: I'm not clear on this, but doesn't
19 intake also involve determining whether the client is
20 eligible?

21 CHAIR BATTLE: Right.

1 MR. MCCALPIN: Oh, yes. Oh, sure.

2 CHAIR BATTLE: So you --

3 MR. ERLNBORN: So I would think that that is,
4 going through all of the same processes as you would if the
5 matter was handled by an in-house attorney.

6 MR. MCCALPIN: It may very well be that in your
7 preamble to this you can make sure that intake includes those
8 other activities, John's and mine, and so on.

9 CHAIR BATTLE: Well, is intake defined anywhere in
10 our reg? Because we're using the term, and then we're asking
11 the question what is encompassed in that term, and then we're
12 trying to determine what's excluded from it, based on what we
13 have here, and it's really two things.

14 One, we're listing examples, so we're trying to say
15 what is a matter? We're distinguishing a matter from a case,
16 we're saying what a case is, and then we're saying a matter
17 is going to be all those things that are not a case.

18 MS. GLASOW: Actually, the way I would interpret
19 this is I would include referral as a matter, but it's not
20 the same as intake, necessarily. We've used those terms
21 separately in many different ways in the corporation, in our

1 CSR handbook, and in different regulations.

2 But definitely, looking at the definition of
3 matter, as opposed to the other definitions, and opposed to
4 case, if anybody asks for an opinion on it, I would
5 definitely say referral was included as a matter, but it's
6 not exactly the same as intake.

7 MR. MCCALPIN: As intake?

8 MS. GLASOW: Right.

9 MR. MCCALPIN: Well, then maybe we ought to make
10 sure that it's included.

11 CHAIR BATTLE: I just don't --

12 MS. GLASOW: Okay, well actually, if the committee
13 likes, we could throw that term in the examples --

14 CHAIR BATTLE: That's fine.

15 MS. GLASOW: -- of what a matter is.

16 MR. ERLNBORN: While you're doing that, maybe you
17 want to say, "such as, but not limited to community education
18 and so forth," to make it clear that that is not limiting,
19 but just examples.

20 CHAIR BATTLE: But such as right at the point -- on
21 page 29, in about the one, two, three, four --

1 MR. ERLENBORN: Third line? Third full line, yes.

2 CHAIR BATTLE: Third full line?

3 MR. FORTUNO: Before "community education"?

4 MR. ERLENBORN: Yes, it would go, "such as --"

5 MR. FORTUNO: But not limited to.

6 CHAIR BATTLE: But not limited to.

7 MS. PERLE: What about four lines down? You were
8 talking about direct services, and then you also want to talk
9 about indirect services.

10 CHAIR BATTLE: Such as but not limited to can be --

11 MR. ERLENBORN: Yes, I think it would be along
12 there as well. It may not be necessary. I think "such as"
13 indicates that it is only an example.

14 CHAIR BATTLE: But I think the point that you're
15 raising is well taken, that when you say, "such as," and you
16 don't list it, then there's a question as to whether or not
17 this is fully --

18 MR. FORTUNO: Inclusive of --

19 CHAIR BATTLE: Yes, yes, fully inclusive. Right.

20 MR. FORTUNO: At the very least it reinforces the
21 point and maybe more than that, it eliminates an ambiguity.

1 CHAIR BATTLE: Bill?

2 MR. MCCALPIN: Top of the next page, the second
3 line.

4 CHAIR BATTLE: Okay, can we do this --

5 MR. ERLENBORN: There's a word missing over there.

6 MR. MCCALPIN: What does general mean?

7 MR. ERLENBORN: I think there's a word missing.

8 CHAIR BATTLE: Where?

9 MR. ERLENBORN: D, top of page 30, the second line,
10 it's on a partial line, "Management and general, and
11 fundraising."

12 MS. GLASOW: That's a term of art, and I don't
13 think it's a mistake.

14 MR. MCCALPIN: Really? What does it mean?

15 MS. GLASOW: You know what?

16 MR. ERLENBORN: Refers back to action?

17 MS. GLASOW: No, but I have the original
18 publication of this rule. Let me see if they explained it.

19 MR. ERLENBORN: I read that and I thought there has
20 to be a word missing.

21 MR. MCCALPIN: Yes.

1 MS. PERLE: I think it's a term of art in the
2 accounting trade, but I'm not sure I know exactly what it
3 means.

4 MS. GLASOW: I didn't do the original publication
5 of this rule, so I'm not as familiar.

6 MR. MCCALPIN: Well, you know, I don't care whether
7 it's in the original publication or not, if it doesn't make
8 sense, we ought to make it make sense.

9 MS. GLASOW: I know, I just don't know why it's in
10 there. Okay, original publication, 1635. This is the
11 definition of what?

12 MS. PERLE: The definition of supporting activity.

13 MR. HOUSEMAN: Oh, general?

14 MS. GLASOW: Mm-hmm.

15 MR. HOUSEMAN: It's an accounting term that's used
16 in GAAP accounting.

17 CHAIR BATTLE: Okay, you may need to, just for the
18 record, say who you are --

19 MR. HOUSEMAN: Okay. She has my name, but it's
20 Alan Houseman.

21 CHAIR BATTLE: Okay.

1 MR. HOUSEMAN: And in accounting, and GAAP -- you
2 know, generally accepted accounting practices -- when you get
3 an audit back -- I don't think I have mine with me -- but
4 management and general are one term, and the way the audit
5 reads is management and general, and then fundraising over
6 here, and then your programmatic audits, you know.

7 CHAIR BATTLE: Okay, mm-hmm.

8 MR. HOUSEMAN: So in an accounting sense,
9 management and general is a term of art that would include
10 stuff that you put in sort of like administrative, but the
11 accounting term is management and general.

12 MR. FORTUNO: And just a note, the LSC accounting
13 guide for LSC recipients, promulgated in August of 1997,
14 defines it page 18. In discussing financial audits, says
15 that, "Supporting activities include both management and
16 general and fundraising expenses." I think it's --

17 CHAIR BATTLE: It comes straight out of the
18 accounting guide, and is it defined anywhere in the
19 accounting guide, so that people know what management and
20 general is?

21 MS. GLASOW: It is actually talked about in the

1 preamble to that rule, and it says it's a name of a
2 subcategory in accounting.

3 CHAIR BATTLE: Okay, so it is at least explained in
4 the preamble.

5 MR. ERLNBORN: I still wonder if it belongs here,
6 because we're not talking about a budget, we're not talking
7 about numbers or accounting, we're defining an activity. I
8 don't think you --

9 MR. MCCALPIN: Then why don't we put a period after
10 "matter"?

11 MR. ERLNBORN: Well, fundraising, maybe you want
12 to include that.

13 MS. PERLE: I just afraid that people will read
14 something into that, to the change.

15 MS. GLASOW: We can put in the preamble that no
16 substantive change was intended.

17 MR. ERLNBORN: Does this really have any -- this
18 accounting term -- have any relevance to the definition?

19 MS. GLASOW: It's just an example.

20 MR. ERLNBORN: No, does it have any relevance? I
21 mean, how do you determine what is management and general

1 activity?

2 CHAIR BATTLE: And is that on your timekeeping
3 sheet? I mean, in other words, when you're trying to
4 determine how to keep time, are you trying to determine
5 whether it's a case, whether it's a matter, or whether
6 there's a supporting activity, and is there any subcategory
7 of management in general?

8 MS. PERLE: And the fact is, if it's not a case or
9 a matter, it's got to be supporting activity.

10 CHAIR BATTLE: Okay, Alan?

11 MR. HOUSEMAN: Yes, I mean, I don't think it
12 matters how you resolve this, probably, but in your GAAP
13 accounting and A110 accounting, you have to keep time based
14 on LSC's thing, but you also have to -- your audit report
15 will show management and general, and you have to have a way
16 of timekeeping to get the management and general.

17 CHAIR BATTLE: How much time is actually spent on
18 management on general.

19 MR. HOUSEMAN: Yes.

20 CHAIR BATTLE: Okay.

21 MR. HOUSEMAN: And we do it by lumping supporting

1 activity for LSC purposes and fundraising together, but
2 somehow they get sorted out. If you look at audits, you'll
3 see it sorted out.

4 CHAIR BATTLE: How does this play out in practical
5 terms?

6 MR. HOUSEMAN: I mean, everybody knows what this
7 means. It's not --

8 CHAIR BATTLE: Okay, so in the field, even though
9 we don't --

10 MR. ERLNBORN: Not everybody.

11 (Laughter.)

12 CHAIR BATTLE: Even though we're not familiar with
13 it, you're telling me that the significance of breaking out
14 matter to include management and general and fundraising
15 separately has some significance from an accounting
16 standpoint of view, ultimately?

17 MS. PERLE: I think that's true, and I think Alan's
18 right, that this has been a rule and people pretty much
19 understand what it means.

20 CHAIR BATTLE: I say leave it in.

21 MR. ERLNBORN: I guess if it ain't broke, don't

1 fix it.

2 CHAIR BATTLE: Yes, I say leave it in. I say if
3 it's been in there from the beginning, and people understand
4 it, and it has accounting significance, and you can accord
5 for a time, if people in the field may have that particular
6 section on their timekeeping records, it makes sense to leave
7 it in, now that we understand it, with the preamble
8 information explaining what it means.

9 MR. ERLNBORN: I still don't understand it, but --

10 CHAIR BATTLE: Okay, let's do this, though. Just
11 for purposes of our discussion, let's go back. I know that
12 Bill had some initial concerns that he wanted to raise, but
13 let's go back and go in order through the rule, and we had
14 stricken in subsection C to the definition section, 1635.2,
15 some language and made some changes to it. So we need to go
16 back and discuss that change.

17 And it looks like what we essentially did, was
18 rather than breaking out certain specific parts of 1610,
19 we've just referred everybody back to 1610, which has all the
20 restrictions so that there's no question that we're talking
21 about when we say restricted activities, be versed in 1610 so

1 that you understand that term and what it means. Is that
2 basically what that change is all about?

3 MS. GLASOW: Yes.

4 MR. FORTUNO: Yes.

5 CHAIR BATTLE: Okay. All right. Okay, anything
6 else on page 30?

7 MR. MCCALPIN: Yes.

8 CHAIR BATTLE: Okay.

9 MR. MCCALPIN: (B)(2), "Each record of time spent
10 must contain, for a case, a unique client." Now, do you have
11 to have a unique client, or a specific client.

12 MS. GLASOW: We only serve unique clients.

13 MR. MCCALPIN: Unique makes it sound like this is
14 an oddball client.

15 MS. GLASOW: Specific?

16 MR. MCCALPIN: I think specific would be better,
17 because somebody may say, "I don't have any unique clients,
18 they're all just normal clients."

19 CHAIR BATTLE: That's old language coming out of
20 the old rule.

21 MR. ERLNBORN: Yes, I don't think it's terribly

1 important, but I would read into this that if you have two
2 Robert Smiths, you must identify them separately somehow.
3 That's what would make it unique.

4 CHAIR BATTLE: If it's not broke, don't fix it on
5 that one, too. Because I think there's a point to be taken
6 about that. And I know when we do our -- we have to do
7 conflict checks. Some of those names that come up, like a
8 Robert Smith, or something like that, it is tough to keep
9 them distinguished.

10 MR. ERLNBORN: Those common names could be, in any
11 program, could be duplicated among the client population.
12 And you have to be able to identify them separately in some
13 way.

14 MS. PERLE: Case numbers, so --

15 CHAIR BATTLE: A unique client name or a case
16 number, so you've got -- sometimes people keep their database
17 based on names, alphabetically, or whatever, and then
18 sometimes numbers. So --

19 MS. PERLE: Some programs use social security
20 numbers. I mean, there are a variety of ways they can make
21 that unique.

1 MR. ERLNBORN: And is unique, in your opinion
2 then, a --

3 MS. PERLE: I think it's probably --

4 MR. ERLNBORN: A good word?

5 MS. PERLE: I don't have any objection to unique.
6 I never heard that that's a problem, and I think it conveys
7 the notion that there, you know, that there's something
8 special about --

9 MR. ERLNBORN: It's different.

10 MS. PERLE: It's different in terms of --

11 CHAIR BATTLE: The client's don't all of them have
12 to be named LaVeeda. We don't have to make up names like
13 that for them.

14 Okay, do we have anything else on page 30?

15 (No response.)

16 CHAIR BATTLE: Page 31?

17 MS. GLASOW: Yes, yes, the date, the issue.

18 MR. MCCALPIN: Yes. For one thing, you've taken
19 out C --

20 MS. GLASOW: And not renumbered.

21 MR. MCCALPIN: And not renumbered D.

1 MS. GLASOW: Yes, relettered, I should say.

2 MR. MCCALPIN: Relettered. But then let me direct
3 your attention to that. "The timekeeping system must be able
4 to aggregate time record information from the time of
5 implementation --" Implementation of what? Of the whole
6 system? Or are they really talking about commencement of the
7 particular representation?

8 MS. GLASOW: I'm sorry, where is he?

9 CHAIR BATTLE: He's at C, right after the stricken
10 C, the new C, "The timekeeping system must be able to
11 aggregate --"

12 MR. MCCALPIN: "From the time of implementation."
13 It would seem to me that would say from implementation of the
14 system, and I think you're really talking about from the
15 commencement of the representation.

16 CHAIR BATTLE: Well, no. Look at the line that's
17 been right before that, and it will make sense. "The
18 timekeeping system must be implemented within 30 days of the
19 effective date of this regulation."

20 Then you go on to say, "Timekeeping system must be
21 able to aggregate time from the time of its implementation on

1 both closed and pending cases."

2 MS. GLASOW: Oh.

3 CHAIR BATTLE: And so you're really talking here
4 about something that's been stricken and it doesn't make
5 sense, once you strike the earlier paragraph.

6 So we need to -- that's the change I think we need
7 to make.

8 MS. PERLE: Stricken from the time of
9 implementation, because you want to say, "Must be able to
10 aggregate time record information on both closed and pending
11 --"

12 CHAIR BATTLE: Implementation of the system.

13 MR. MCCALPIN: I thought what they were trying to
14 say was that it had to aggregate the time record on each
15 individual representation from the time of the commencement
16 of the representation.

17 CHAIR BATTLE: Well, we could repeat --

18 MR. FORTUNO: I think it's intended --

19 CHAIR BATTLE: -- "of the timekeeping system"
20 there.

21 MR. FORTUNO: -- to aggregate kinds of cases, so

1 that you have -- you're able to aggregate time record
2 information to come up with a total for a specific kind of
3 legal problem.

4 MR. MCCALPIN: Oh, I don't think that -- I wouldn't
5 read that into it at all.

6 MS. PERLE: No, it's on a case-by-case.

7 MR. ERLENBORN: I think what's missing is what was
8 taken out above. We should just add that in.

9 "Implementation of the timekeeping system."

10 CHAIR BATTLE: Timekeeping system, and that takes
11 care of it. Yes, yes.

12 MR. ERLENBORN: Because that's what was --

13 CHAIR BATTLE: Yes, that's right.

14 MR. ERLENBORN: That's what it meant before that
15 was taken out.

16 MS. PERLE: Well, except the timekeeping system
17 isn't implemented. You know, this was in the original
18 regulation, because it was referring to the effective date of
19 the regulation. That doesn't really make any sense.

20 CHAIR BATTLE: So shouldn't we just say, "The
21 timekeeping system must be able to aggregate time records on

1 both closed and pending cases by legal type?"

2 MS. PERLE: I think that's really all that we need
3 now. I don't know what --

4 MR. MCCALPIN: You might have a system
5 longstanding, implemented years ago, which didn't have this
6 capacity, and they'd have to go back and redo it.

7 CHAIR BATTLE: Right, yes, yes. And we're getting
8 new service areas, new recipients over time,
9 so --

10 MS. GLASOW: LaVeeda?

11 CHAIR BATTLE: Mm-hmm?

12 MS. GLASOW: Ted just informed us that Victor was
13 right. The timekeeping guide that we have that went out to
14 the field to implement this rule basically does interpret
15 this as saying that you need to be able to aggregate cases by
16 case type.

17 And that doesn't deal with the implementation
18 issue, but it does deal with why this is required.

19 CHAIR BATTLE: Well then, this is my
20 recommendation. "The timekeeping system must be able to
21 aggregate time record information on both closed and pending

1 cases by legal problem type." And that's the way it needs to
2 read now, okay?

3 All right, so in doing that you strike "from the
4 time of implementation" out of it.

5 MS. GLASOW: We need to go back to page 30.
6 There's an issue that needs to be resolved.

7 CHAIR BATTLE: Okay, all right, let's go back to
8 page 30.

9 MR. FORTUNO: This would be 1635.3, subsection B,
10 time spent by attorneys and paralegals -- I'm sorry, (B)(1) -
11 - "Time records must be created contemporaneously and account
12 for time by date."

13 The proposed rule does require both full-time and
14 part-time attorneys and paralegals to provide the date as
15 well as the amount of time spent on each case, matter, or
16 supporting activity.

17 And it's our recommendation that the date
18 requirement be retained in the final rule.

19 MR. MCCALPIN: Oh, yes.

20 CHAIR BATTLE: Okay, yes.

21 MS. GLASOW: We don't have any problem with that.

1 CHAIR BATTLE: Okay.

2 MR. FORTUNO: And then I guess there needs to be,
3 on page 31, some revision of the subsection labels there. We
4 need -- what is now D should be C, what is E should be D, and
5 so on.

6 MR. MCCALPIN: Right.

7 MR. FORTUNO: And then we get to what is here
8 labeled E, but should be D, which is the other significant
9 change that we talked about at the very outset, which has to
10 do with certification.

11 MR. MCCALPIN: Where are you, Victor?

12 MR. FORTUNO: This is page 31, and it's 1635.3,
13 subsection B.

14 MR. MCCALPIN: D, as in dog?

15 MR. FORTUNO: Pardon?

16 MR. ERLNBORN: That's after the change. It's E
17 here, right?

18 MR. FORTUNO: It's E on what you have, but it
19 actually should be D.

20 MR. MCCALPIN: D? Okay, all right. Well, you're
21 not talking about the --

1 MS. GLASOW: No, not yet.

2 MR. FORTUNO: No, no, not yet.

3 MR. MCCALPIN: Oh, okay.

4 MR. FORTUNO: Why don't you go ahead and --

5 MS. GLASOW: Okay. A comment, basically, said that
6 using the term time period in this paragraph could suggest
7 that we're requiring someone to -- could be referring to the
8 specific hours for an entire pay period, such as a week or
9 two-week pay period. And that during that pay period, they
10 couldn't be involved in restricted activities.

11 What we're really trying to say is any time in that
12 period that you're being compensated by the recipient, you
13 cannot be engaged in restricted activities.

14 CHAIR BATTLE: So if your start period --

15 MS. GLASOW: So what we've done is take out the
16 word period.

17 CHAIR BATTLE: Yes, and that clears it up.

18 MS. GLASOW: Right.

19 CHAIR BATTLE: Okay. What about in that paragraph,
20 "Recipients shall require any attorney or paralegal who works
21 part-time --" substituting the word "employed part-time" for

1 recipient and part-time "for an organization that engages in
2 restricted activity," because a person can work pro bono.
3 And I think that the distinction here that we're intending is
4 if a person is employed in both instances.

5 MS. GLASOW: I don't think we have a strong feeling
6 about either word. We will make it clear in the preamble
7 that basically what we're trying to say, if you are doing
8 work for which you're being compensated by the recipient,
9 then you cannot be engaged in restricted activity.

10 MR. ERLNBORN: And employed --

11 MS. GLASOW: Employed would do it, works would do
12 it, as far as we're concerned, so --

13 MS. PERLE: And also, I don't have a strong feeling
14 one way or the other about that, but the certification refers
15 to time for which you're compensated by the recipient.

16 CHAIR BATTLE: Right. Okay.

17 MS. GLASOW: Does anyone have a preference on the
18 word? Is it employed?

19 CHAIR BATTLE: I think employed is a better word
20 than works.

21 MS. GLASOW: "Who is employed."

1 CHAIR BATTLE: "Who is employed."

2 MR. FORTUNO: And then the last full sentence, it
3 starts in the text on that page, is where we get to the de
4 minimus exclusion from certification requirements.

5 CHAIR BATTLE: Okay.

6 MR. FORTUNO: And that's discussed the following
7 couple pages.

8 MS. TARANTOWICZ: I'm sorry, I haven't thought this
9 through, but I'm wondering whether changing works to employed
10 would cover people that work on a contract that are not
11 regular employees. Do you know what I mean?

12 MR. FORTUNO: The consultants as opposed to
13 employees?

14 MS. TARANTOWICZ: Mm-hmm.

15 MS. GLASOW: We could clarify it in the preamble. I
16 mean, basically what I've said in this footnote we can say in
17 the preamble and say, "Whether the program considers it being
18 employed or working for the program, if they're being
19 compensated for a job being done, you cannot be involved with
20 that," solve the problem.

21 MS. PERLE: Well, I have a question about that,

1 with respect to consultants. Does that mean that someone who
2 is a management consultant for the program and also does
3 consulting for a program that does --

4 MR. FORTUNO: Restrictive work?

5 MS. PERLE: Restrictive work, I'm sorry, I don't
6 think that you need to include that.

7 CHAIR BATTLE: This is really attorneys really
8 working on cases, I believe. But you're saying if an
9 attorney is a management consultant?

10 MS. PERLE: Laurie used the words consultants.

11 MS. TARANTOWICZ: I didn't say that.

12 MS. PERLE: Oh, you didn't?

13 MR. FORTUNO: I did.

14 MS. PERLE: Oh, I'm sorry.

15 MS. TARANTOWICZ: What I really mean is somebody
16 who does the job, the same job as an attorney or a paralegal,
17 but isn't a regular employee. In other words, he's a -- I
18 don't know. We have contract employees that aren't employees
19 in the strict sense.

20 MS. GLASOW: Well, for instance, if you had a
21 particularly difficult case or you didn't have enough staff

1 to handle a case, but you have the funds, you could find an
2 attorney, contract with that attorney to do that one case for
3 your program. That would be covered in here.

4 MS. TARANTOWICZ: Right.

5 MS. GLASOW: But it would be a contract situation,
6 rather than, you know, "You're one of our regular employees."

7 CHAIR BATTLE: Okay. I don't feel that strongly
8 about it. I thought employed works well if -- taking the
9 word "employee" or "employed" somehow means employee when we
10 have people on contract, then go ahead and go with "worked."

11 MR. FORTUNO: Go with "works" but provide some
12 explanation of that in the --

13 CHAIR BATTLE: Exactly.

14 MR. FORTUNO: -- preamble so that --

15 CHAIR BATTLE: Yes, okay. The de minimus is the
16 last sentence on that page, and it moves on to the next.
17 We've had a long discussion already about de minimus. Are
18 there any questions about the changes?

19 (No response.)

20 CHAIR BATTLE: Hearing none -- I'm sorry, Linda.

21 MS. PERLE: Mr. McCalpin?

1 MR. MCCALPIN: If you start with the sentence that
2 begins on 32 and goes over, "Such de minimus actions would
3 include activities such as answering the phone, opening or
4 briefly screening mail." What about e-mail, which is --

5 CHAIR BATTLE: You do that the same way, you open
6 it and screen it.

7 MR. MCCALPIN: Yes, but does it prohibit responding
8 to e-mail?

9 MR. ERLNBORN: Again, this is not meant to be
10 limiting, because it does say "such as."

11 MR. MCCALPIN: Yes, but for instance, can somebody
12 get an e-mail which seems to demand an immediate response and
13 respond to it and still have that considered de minimus?

14 MR. FORTUNO: I think that if you received a letter
15 asking to meet or asking that you immediately contact
16 someone, same would be true of e-mail. You could not engage
17 in any substantive activity. Certainly the fact that you get
18 something electronically or in written form, you don't know
19 what it is until you open it, and it's that involuntary piece
20 of it, open it to see what it is. Once you see what it is,
21 you should not be taking any substantive action other than

1 setting aside a time outside of program-compensated hours
2 when you can deal with the matter. Is that right?

3 MS. PERLE: Well, I think that the examples that
4 are included here are much too limiting. I mean, and you
5 know, they suggest a very limited activity. And I would
6 prefer to leave the examples out and put some discussion in
7 the preamble of examples.

8 Alternatively, in the language that came up in the
9 discussion here, page 32, the corporation staff has suggested
10 some standards that deal with those things that are of little
11 substance, require little time, not initiated by the
12 employee, or generally are unavoidable. My suggestion is
13 that I would prefer that we just leave the examples out of
14 the language of the rule and discuss it in more detail in the
15 preamble or failing that, that we put in those standards than
16 the specific examples.

17 Because I have a great deal of problem with
18 answering the telephone and establishing another program time
19 with the caller to discuss the restricted activity. I mean,
20 what if the judge calls you and he wishes to change the time
21 of a hearing? You're not going to say to the judge, "I'm

1 sorry Judge, I can't talk to you right now," or, "I can't
2 talk to the clerk right now, you have to come back in another
3 -- you have to call me after 5:00 at home, or in my other
4 office tomorrow."

5 I think that in terms of the practical realities of
6 practicing law, that really doesn't make a lot of sense.

7 CHAIR BATTLE: Okay. Laurie, I should have invited
8 you up when I invited everybody else up. I'm glad you joined
9 us at the table. So if you've got some input that you want
10 to do, you can do it contemporaneous with us going through
11 the rule.

12 And Linda, in response to your point, I really
13 think not putting anything there doesn't give sufficient
14 guidance to people of what we intend de minimus to mean, so
15 we are going to have to address the issue of de minimus in
16 the rule itself.

17 MS. PERLE: Well, I'm suggesting that we put in
18 either examples in the preamble or the kind of standards that
19 Suzanne talked about in the written. My suggestion would be
20 that we add -- we take out the examples but we put in
21 something to the effect, "De minimus actions are considered

1 to be those that are of little substance and require little
2 time, and are not initiated by the part-time employee, or are
3 generally unavoidable."

4 I don't have any problems with the notion that we -
5 -

6 CHAIR BATTLE: Tell me where you're reading from,
7 because I --

8 MS. PERLE: I'm sorry, I'm reading -- it's
9 something that I put together.

10 MS. GLASOW: It's in the footnote, and it's the
11 second paragraph up from the bottom, and it's one, two,
12 three, four, five lines down.

13 MS. PERLE: I have a couple of extra copies of
14 this.

15 MS. GLASOW: "Actions which would meet the standard
16 --"

17 MS. PERLE: My line, which is a little bit
18 different, but it's the gist of it -- I'm sorry I didn't have
19 extra copies of it. I did it just as I was heading out the
20 door. I mean, I didn't print out copies, but I do have some
21 -- one of the reasons I did this is because I noticed I had a

1 typo in it and I was a little embarrassed.

2 CHAIR BATTLE: We will forgive you.

3 MS. PERLE: I've actually given away mine. And
4 what I'm reading from was an alternative one.

5 MR. MCCALPIN: I think the alternate one -- it's a
6 standard.

7 MR. ERLNBORN: Yes.

8 CHAIR BATTLE: A standard may be able to help
9 within that example, actually.

10 MS. PERLE: Pardon me?

11 CHAIR BATTLE: I said a standard may be more
12 helpful for the reason that I think one other example in the
13 question does become if we give just these two examples, how
14 informed will people be of what parameters replacing on what
15 we mean by de minimus.

16 And then secondly, you're asking lawyers in the
17 field to certify. And in doing that certification, I think
18 it's fairer to have some sort of standard for them to be able
19 to assess how that's supposed to work, rather than to just
20 give them two examples out of the multitude of examples of
21 contact that a person has during the course of the day.

1 I mean, and the way that the practice of law works,
2 I mean, I've been practicing law since I've been here. I've
3 gotten calls from my office and I've had to step out in the
4 hall and respond and then come back in, and that's just the
5 nature of the way it works.

6 So I think the standard is a clearer way to inform
7 people of what we intend by de minimus.

8 MS. PERLE: And this makes it clear that if you get
9 a long e-mail on another case, you know, you should a,
10 probably not read the whole thing, put it off to another
11 time, and b, not spend a lot of time responding to it. But
12 if the e-mail is, you know, "We have to change the hearing to
13 such and such a time," and it's on a case that you're doing
14 for -- you can respond to that and say, "Okay," or, "No,
15 10:00 doesn't work for me," something like that. And the
16 same thing on a phone call.

17 MS. GLASOW: So are you suggesting what I said in
18 here? Is that the language --

19 MS. PERLE: I'm suggesting the language here.

20 MS. GLASOW: Right here?

21 MS. TARANTOWICZ: So what you're suggesting goes

1 beyond the examples in the rule. In other rule, the examples
2 in the rules state basically you can't avoid the contact, and
3 you say, "I can't talk to you now, I can talk to you at X
4 time." But what you're suggesting is that you do talk to
5 them now.

6 MS. PERLE: Briefly. Very briefly, and that it not
7 be a discussion about the substance of the case. That's what
8 we've suggested, basically, all along. I mean, this is not a
9 change in our position.

10 MR. FORTUNO: It just seems that to the extent that
11 you look to see what it is you've been sent. Say, for
12 example, in a e-mail message or in a letter, or answer the
13 phone to see who it is and who's ringing it off the hook.
14 You don't know in advance to not take that action.

15 But it seems that once you see, once you hear who's
16 on the other end and what it's about, or you get far enough
17 down the letter or the e-mail message to see what it's about,
18 you then have some discretion as to whether to proceed or
19 not. And it seems that that's the pivotal point, is what you
20 do then.

21 And I think that what's been proposed is such that

1 once you reach that point, you need to say essentially the
2 law doesn't -- whether you say it this way or not, you know,
3 depends on the individual -- but, "The law doesn't permit me
4 to do this just now. I need to speak with you, you know,
5 tomorrow. I'll call you tomorrow, I'll call you after I
6 leave here," however you want to do it.

7 And I think that's really where we are, is are we
8 going to require folks to cut it off then, or allow some
9 additional leeway?

10 CHAIR BATTLE: What are your thoughts about using a
11 standard as opposed to the two examples we have in that
12 language?

13 MR. FORTUNO: I think I don't have a problem with
14 using a standard, and I too believe that if we could craft it
15 so that folks understand what it is that's meant, and then
16 maybe use examples in the preamble, that would work better
17 than the reverse, having the examples in the text and the
18 standard in the preamble.

19 It's just that the standard that we would be more
20 inclined to go with is more than just that one sentence in
21 the middle of the third full paragraph of footnote six. That

1 sentence in the middle says, "Actions which would meet this
2 standard are those that meet all or most of the following
3 criteria: actions that are of little substance, require
4 little time, are not initiated by part-time employee, and for
5 the most part, are unavoidable."

6 It wouldn't end there. The discussion here goes on
7 to say that actions would not meet this standard -- "Actions
8 which would not meet the standard include researching,
9 preparing legal documents, meeting with or providing advice
10 to a client, and conferring with third parties on behalf of
11 the client."

12 MS. PERLE: Why isn't that --

13 CHAIR BATTLE: Well, what you do is why not have
14 the standards set out in the rule and then examples of what
15 meets the standard and examples of what does not meet the
16 standard in the preamble.

17 MS. PERLE: That's exactly what --

18 CHAIR BATTLE: And that way, what you've got is a
19 standard that's set. You're asking lawyers to certify on a
20 quarterly basis based on that standard, and you've given them
21 examples. So if there is a problem, at least they've had a

1 chance to look at the standard and look at its application in
2 the preamble as well. I think that's a fair way to resolve
3 this particular issue.

4 MS. GLASOW: So you want to use the language that I
5 have in footnote six, that sentence starts with, "Actions
6 which would meet as the standard --"

7 CHAIR BATTLE: Yes.

8 MS. GLASOW: And then we would put examples in the
9 preamble?

10 CHAIR BATTLE: In the preamble, both of what meets
11 the standard and what does not meet the standard.

12 MS. GLASOW: This is consistent with our program
13 integrity analysis too, it's a case by case basis and we you
14 know, look at the particular facts.

15 MR. FORTUNO: I do think that we need to provide as
16 by-the-line rule as we can, since there's a requirement for
17 certification by management and liability involved.

18 So I think that we can discuss a standard along the
19 lines that the chair suggested. That is, the general
20 language then, would be examples of what meets or doesn't
21 meet the standard in the preamble. MS. GLASOW:

1 So we can discuss?

2 MR. ERLNBORN: I'm not certain when we get to the
3 real world that what we do here is going to be all that
4 important.

5 (Laughter.)

6 MR. FORTUNO: So that language --

7 MS. GLASOW: That is the standard?

8 MR. FORTUNO: That would be the standard up in the
9 text. Okay, I think that moving that up to the text as the
10 standard with ample explanation in the preamble on which we
11 would consult with the OIG and CLASP, we can do that.

12 CHAIR BATTLE: Okay. This is our final read on
13 this, and we really need to have this language before it goes
14 in to the board tomorrow.

15 MS. GLASOW: I'll have it ready.

16 CHAIR BATTLE: Okay, all right. Okay, we've gotten
17 through de minimus with more than de minimus time. Let's
18 move on to the next issue. Do we have any issue with
19 anything on page 33 or 34?

20 MS. GLASOW: Yes, 33.

21 CHAIR BATTLE: Okay.

1 MR. MCCALPIN: Thirty-four opens the whole
2 Pandora's box.

3 CHAIR BATTLE: Tell us about 33 first. We talked
4 about these dates being established by the corporation.

5 MS. GLASOW: Yes. There are basically two issues
6 here. There were some comments that did not want to have to
7 do quarterly reports, but we don't feel that's too onerous or
8 too large an administrative burden, and also an employee's
9 recollection of what they've done within a quarter would be
10 fresher if they did it in a quarter's time. So we recommend
11 maintaining, keeping the requirement for quarterly reports.

12 There was also a comment on the language we had
13 about when the reports would be due. And we recommend
14 revising that language so that there may be a difference when
15 the person actually makes their certification and when the
16 quarterly certifications are due, because there might be an
17 instance where an employee's leaving the program, so he needs
18 to make the certification before he or she leaves, but that
19 quarterly report is due at the program on a particular date,
20 and that's the date the corporation will make clear.

21 The other issue is one comment -- assume that the

1 language required that the certifications be sent to the
2 corporation on a regular basis, and we're making it clear
3 that this is not a reporting requirement, it's a record-
4 keeping requirement. So the certifications will be kept at
5 the recipient's place, but they would be available for us to
6 look at, or any auditors, or anybody who came in.

7 MS. PERLE: I'm not sure that it's clear from the
8 language.

9 MR. ERLENBORN: Does the use of the word "do" have
10 the implication of filing with somebody, or --

11 MS. GLASOW: That may be the ambiguity.

12 MS. PERLE: I think that's ambiguous. I don't
13 think that the rule has stated as clear that they don't have
14 to be sent into the corporation. "Shall be made --"

15 MR. ERLENBORN: Something like "completed,"
16 or --

17 CHAIR BATTLE: Submitted to the recipient on dates
18 established --

19 MS. GLASOW: Available at the recipient, or -- I
20 don't know.

21 MR. HOUSEMAN: Shall be submitted to the recipient

1 on dates established.

2 CHAIR BATTLE: Shall be submitted to the recipient
3 on dates established.

4 MS. PERLE: Well, except that that's really the
5 problem. That was the problem before --

6 MS. GLASOW: Yes.

7 MS. PERLE: -- that you didn't want to say that
8 everybody had to do their certification on June 30th, you
9 know, the person wasn't there that day or you know, they had
10 left on June 15th, or it was a Saturday or Sunday.

11 CHAIR BATTLE: The other question I had is are we
12 establishing what those quarterly due dates are, or are we
13 allowing the programs to establish their quarterly due dates?
14 If we're going to establish them, then it seems that
15 everybody across the country the day before is going to be
16 getting their reports in.

17 MS. PERLE: Now that I'm thinking about it, I don't
18 see why it just doesn't say, "Certification should be made on
19 a quarterly basis and shall be in a form determined by the
20 corporation." Do we really need the business about the
21 dates?

1 CHAIR BATTLE: I would prefer not to put another
2 date deadline on a lawyer if I can help it. As long as it's
3 done quarterly and everybody has the quarterly statements and
4 the record-keeping is there, I'd say it doesn't matter to us
5 which dates you get them, as long as they do them on a
6 quarterly basis.

7 MS. TARANTOWICZ: Isn't quarterly pretty much the
8 same everywhere?

9 MS. GLASOW: And we'll just send other guidance at
10 some point and say, "Here is where the first quarter starts,"
11 and you know, start from there.

12 MS. PERLE: And if the first quarter ends March
13 30th, and they do them on April 30th, but they're
14 certifications for the period from January 1 to March 30. Is
15 there a problem with that? As long as the auditors come to
16 look we'd have the certifications done for the period.

17 CHAIR BATTLE: Right. I don't think that we need a
18 deadline. I think we just need quarterly certification.

19 MS. PERLE: Okay.

20 CHAIR BATTLE: Okay. All right?

21 MS. PERLE: Well, that's good work. The lawyers

1 across America will be happy when they see that.

2 MR. FORTUNO: Lawyers rejoice.

3 CHAIR BATTLE: Okay, 1635.4, administrative
4 provisions. Any questions there? Bill? No?

5 MR. MCCALPIN: I say it opens the whole Pandora's
6 box that we're wrestling with. Well, there's nothing we can
7 do about it here now, but --

8 MS. GLASOW: This really --

9 MR. MCCALPIN: -- I'm just telling you that it
10 raises the whole issue.

11 MS. GLASOW: There were no revisions in the
12 proposed rule to this, and have been no public comments on
13 it, so we are not recommending any changes. So --

14 MR. HOUSEMAN: Let me say one thing on Bill's
15 point, because we should address it, which is time records in
16 legal services may be different than the private practice.
17 Most people keep time records based on case numbers and they
18 don't put client-identified information in the time records.
19 They're very careful about that.

20 MR. FORTUNO: In legal services.

21 MR. HOUSEMAN: In legal service.

1 CHAIR BATTLE: Okay.

2 MR. HOUSEMAN: Not saying everybody, but most of
3 the systems are designed so that you don't have the client
4 identity hooked up with --

5 CHAIR BATTLE: Okay.

6 MR. HOUSEMAN: -- necessarily with the activities.
7 It could be a case number in there.

8 CHAIR BATTLE: Okay.

9 MR. ERLNBORN: Should the corporation take some
10 action to recommend that this be done for those grantees who
11 do not use case numbers?

12 MR. HOUSEMAN: Actually, the time guide does that.
13 You have a guide, a timekeeping guide, that --

14 MS. PERLE: And in a number of things that we've
15 sent out to field programs we've also encouraged them not
16 just in time records, but in financial records as well, to
17 not have any information in them that identifies the
18 particular client.

19 CHAIR BATTLE: Okay. So if there are no changes to
20 that, then I will entertain a motion to adopt the timekeeping
21 record regulation with the changes that have been discussed

1 and revisions discussed today.

2 MR. MCCALPIN: Wait a minute. This is a final
3 rule?

4 CHAIR BATTLE: Yes, that's right.

5 MS. GLASOW: Yes.

6 MR. MCCALPIN: Don't we, in a final rule, simply
7 recommend that the board adopt it --

8 CHAIR BATTLE: Final rule.

9 MR. MCCALPIN: -- as a final rule and then it
10 becomes published and effective in 30 days and so forth?

11 CHAIR BATTLE: Yes, yes.

12 MR. MCCALPIN: I think we simply, with respect to
13 final rules, recommend adoption by the board.

14 CHAIR BATTLE: That's right. I want us to, as a
15 committee, adopt the final -- then if the recommendation to
16 the board comes tomorrow --

17 M O T I O N

18 MR. MCCALPIN: I move you will recommend to the
19 board an adoption of 1635 as before us with amendments as a
20 final rule.

21 MR. ERLNBORN: Second.

1 CHAIR BATTLE: And properly moved and seconded,
2 that we adopt 1635 as revised today. All in favor?

3 (Chorus of ayes.)

4 CHAIR BATTLE: For approval by the board as a final
5 rule. Okay, somebody help me with my time. How much time do
6 we have for our committee? It's 12:30.

7 MR. FORTUNO: I think 12:30 is lunch.

8 CHAIR BATTLE: Do we have time to continue this
9 afternoon?

10 MR. MCCALPIN: Oh, yes. Why don't we come back at
11 1:30.

12 CHAIR BATTLE: At 1:30?

13 MR. HOUSEMAN: I have a small problem. I guess I
14 just assumed we'd move faster. I have a meeting at 2:00 with
15 a number of other folks somewhere else, and is there any way
16 we could get to property in time that I could try to get to
17 the meeting at 2:00, or give it a shot at least?

18 CHAIR BATTLE: Yes, if it's 12:30, do we need a
19 full hour for lunch, or can we do that in --

20 MR. HOUSEMAN: I'm just doing property, so that --

21 MR. MCCALPIN: A property guide?

1 MR. HOUSEMAN: Yes.

2 MS. PERLE: I'm going to do the fund balance, so --

3 CHAIR BATTLE: How long is your meeting? I mean,
4 can you get back and if we start --

5 MR. HOUSEMAN: Normally they go two hours.

6 CHAIR BATTLE: Oh. That's --

7 MR. HOUSEMAN: I mean, maybe I could get it in an
8 hour and a half.

9 MS. GLASOW: Because we've got the Erlenborn
10 commission thing at 5:00.

11 CHAIR BATTLE: At 5:00? Okay.

12 MR. FORTUNO: Well, I'd be happy to do the property
13 manual without Alan.

14 (Laughter.)

15 MR. FORTUNO: And maybe we can just get back from
16 lunch early --

17 CHAIR BATTLE: Why don't we get the property manual
18 first --

19 MR. FORTUNO: And pick it up first.

20 CHAIR BATTLE: -- off this afternoon, and let you -

21 -

1 MR. HOUSEMAN: Yes, I mean I can lay it out --

2 MR. ERLNBORN: Why don't we try and get back here
3 at 1:15?

4 CHAIR BATTLE: Yes. We'll be back at 1:15, we'll
5 start with property manual, that will give you a chance to --

6 MR. HOUSEMAN: Sure, sure, that's fine.

7 CHAIR BATTLE: Okay? We will do that for you.

8 MR. FORTUNO: And for those who don't know, lunch
9 is being served in the OIG party room.

10 CHAIR BATTLE: We are now in recess until 1:15 this
11 afternoon.

12 (Lunch recess taken at 12:40 p.m.)

13 CHAIR BATTLE: One of the participants in the
14 discussion on the next item that we have on our agenda, which
15 pertains to the now fourth item listed, consider and act on
16 proposed property manual acquisition procedures and property
17 standards.

18 You should have in your board book a little history
19 of what has happened in the past, as it relates to property
20 and as well, as proposed manual.

21 And it's, I think, appropriate to note that in the

1 past, we have had a collection of opinions and other
2 interpretations of our responsibility as it relates to
3 personal property, real property, and a manual was put
4 together at one point, but we're at a point now where pulling
5 all of that information together on one specific place seems
6 to make sense and so the staff has proposed that this
7 committee review these procedures and incorporate them in a
8 manual.

9 We would put this out for public comment as we have
10 in the past for rules, and the fact of putting the manual out
11 for public comment will give us the opportunity to receive
12 public comment before we make a final decision with regard to
13 the provisions of this manual.

14 Can we get just briefly on the record as to the
15 history leading up to this? Because this is a little bit
16 different from what we've been handling so far, as it relates
17 to changes in our regulations that will appear in the CFR.

18 MS. GLASOW: Basically, the corporation, in 1975
19 and again in 1979, we published instructions in the Federal
20 Register setting out procedures for procurement, inventory,
21 control, and disposal of non-expendable personal property by

1 LSC recipients.

2 In 1981, the 1979 instruction was superseded by the
3 property management manual for LSC programs, and that's what
4 we've been using. But it only covers, in our view, non-
5 expendable personal property.

6 And if the committee would like to refer to a
7 chart, at the end of the rule it basically is a chart we put
8 together showing how the federal government normally looks at
9 the types of property.

10 So there's two types of property, real property and
11 personal property. Under personal property it can be either
12 tangible or intangible.

13 And tangible property also has two types. It can
14 be expendable and non-expendable. Expendable property is
15 considered normally to be supplies. And this manual that
16 we're offering to you today does not cover supplies. So it
17 doesn't cover expendable property.

18 In our view, there was really no clear guidance in
19 any one document covering our regulation of real property.
20 It has variously, over the years, been dealt with through
21 some letters that went out to field programs and interest

1 agreements between the corporation and programs when they did
2 use LSC funds to purchase real property.

3 Much of the documentation of that has been lost
4 when we closed our regional programs who were handling those
5 issues for us in the different regions. Much of that
6 documentation is lost.

7 We have done an extensive review of all our
8 grantees, and we now know with which grantees we do have
9 interest agreements and which ones we do not. And we're
10 basically dealing with that.

11 And because of the lack of a clear document, in
12 lack of having copies of any interest agreements, if they do
13 exist, we have felt for some time that there was a need to
14 put all this together into one manual guidance or something
15 of some sort so that both the corporation and the grantees
16 would have a clear indication of how they can use LSC funds
17 to purchase, use, and dispose of property that is purchased
18 with LSC funds.

19 CHAIR BATTLE: Okay. Are there any questions about
20 the background and history of how this particular item comes
21 before the board? If not, why don't we go forward with an

1 explanation of the actual property manual.

2 MS. GLASOW: I guess there's one point we should
3 talk about before we get into the provisions of the manual,
4 is the applicability of the manual and both the legal reasons
5 and really just fairness reasons.

6 We clearly intend for the manual to be prospective
7 and to only apply to purchases made after the effective date
8 of this manual, and that it will apply to real and non-
9 expendable personal property, but not to supplies.

10 We also highly recommend that this will be
11 discussed and clarified in the preamble to the publication of
12 this manual, and also that when the manual is published, it
13 would be right up front in the introductory section, a
14 statement of the applicability, so it's very clear to people,
15 you know, what our intent is in that sense.

16 CHAIR BATTLE: Okay.

17 MR. ERLNBORN: To your knowledge, are there any
18 grantees who have purchased real property where there is no
19 agreement?

20 MS. GLASOW: We suspect that exists, however we're
21 not terribly concerned. We're working with those grantees.

1 But some of the purchasing happened many, many, many years
2 ago, too, so it's -- I mean, the funds have been wisely used
3 and they've been grantees for many years, so it certainly was
4 worth the expenditure. We just don't have any clear
5 agreement as to what our interest is, and therefore cannot
6 really assert it, other than to negotiate with the grantee
7 about what would happen when that period of time is over.

8 MR. MCCALPIN: In view of the fact that Alan has a
9 meeting, could I suggest that we let him take up whatever
10 issue is important to him, even out of turn, so that he --

11 CHAIR BATTLE: That's fine. Alan?

12 MR. HOUSEMAN: Okay. Thank you, Bill. I'm Alan
13 Houseman, on the record, representing National Defenders'
14 Association and its member programs.

15 I want to say first, our most significant issue was
16 the issue that Suzanne just addressed, and the applicability
17 of the manual, and we worked that out. Just one other
18 introductory comment. At the last time we considered a
19 proposed regulation on this and sent it back to staff, you
20 essentially suggested that we all sit down and try to work
21 this out, and I sat down with the vice president for

1 operations, Danilo Cardona, who is here, and we worked
2 through this and we reached an agreement on all of the major
3 issues.

4 So I am in agreement with the substance of what is
5 here in the manual. And we worked through a number of issues
6 that I raised, and worked them out to my satisfaction. Some
7 issues that I wanted to change, LSC wasn't willing to --
8 Suzanne was in this negotiation too -- but I thought it made
9 sense to compromise and, you know, it was a very good
10 exchange.

11 Now, that doesn't bind the board or anything, I
12 understand that, but in terms of trying to present sort of a
13 unified face before the committee, I want to make it clear
14 that we tried our best to do that, and I think we reached
15 agreement on that.

16 The only area where I actually have what I would
17 call a relatively minor problem is -- I had it marked, it was
18 about the purchasing --

19 MS. GLASOW: Real or --

20 MR. HOUSEMAN: -- hang on.

21 CHAIR BATTLE: Tell us which page you're

1 referencing.

2 MR. HOUSEMAN: Well, I'm trying to find it, that's
3 the problem.

4 MS. GLASOW: Real or personal?

5 MR. HOUSEMAN: It's personal, and it's the staff
6 issue -- it's on a different page than I was looking at.

7 MS. PERLE: That would be --

8 MR. HOUSEMAN: Fifty on B.

9 MR. MCCALPIN: What?

10 MR. HOUSEMAN: On page 50, on B, says that,
11 "Recipient board members or employees involved in the
12 decision to disclose may not purchase or otherwise acquire
13 personal property." And if you look at the footnote 37, it
14 says that a, it's inconsistent with the old property
15 management manual, and b, there is no limitation in the
16 federal guidelines on sale to employees.

17 And my recommendation would be to delete that
18 section. I don't see what the problem is if other staff of a
19 recipient can purchase personal property, whether board
20 members or some employees involved in a decision might not be
21 able to purchase personal property too.

1 Again, it's not different than you know, in my
2 terms, when I'm thinking about running a program, if we have
3 to downsize, and we get a whole set of new property in and
4 we're trying to sell it, we can't sell some of it, there's
5 some left over, and some staff wants to purchase it, I don't
6 see what the problem is with that.

7 And if it happens to be a member of my board, or if
8 it happens to be some administrative person in my office, say
9 my office manager, who had something to do with it, to say
10 well, she couldn't purchase it, but you know, Linda could
11 purchase it doesn't make any sense to me.

12 And so I just don't see why we need this limitation
13 here now. It's not a big issue, I want to be clear, but I
14 don't understand the limitation that's here. And as said,
15 it's not consistent with federal standards, it's inconsistent
16 with our prior standards, and to my knowledge, there hasn't
17 been any use of this in the past and there's no specific
18 information that I know of that suggests that there's been
19 some problem that you need this kind of a measure. So I
20 would just strike the whole paragraph, section.

21 MR. FORTUNO: I don't think we're familiar with any

1 instance of abuse. And it's not something about which we
2 feel terribly strongly. It's here largely because the
3 inspector general's office has a concern about conflicts,
4 self-dealing, more the appearance than anything else.

5 Nobody's suggesting that there have been instances
6 of it, but the issue -- and for this reason, the corporation,
7 LSC itself, doesn't take excess property and make it
8 available to employees when we're unloading the property.

9 MR. MCCALPIN: You do or do not?

10 MR. FORTUNO: Do not, do not. It's because of
11 concerns expressed by the IG. I think that the reason here
12 for limiting it, one, it doesn't limit it altogether. It's
13 not a broad ban. It's narrow, and it's limited to the
14 decision-makers. That is, those who decide we've got some
15 property and we want to dispose of it. Let's make it
16 available to ourselves and anyone else who's interested.

17 There is a potential for conflict there. And I
18 think that's what the OIG was concerned about, and that's why
19 it's aimed at the decision-makers.

20 CHAIR BATTLE: Help me to understand this about the
21 way it's written. It says, "Unless the property has no

1 current fair market value." Are we talking zero, you know,
2 so if it's trash and it's worth zero, then you can sell it to
3 --

4 MR. MCCALPIN: You can give it.

5 CHAIR BATTLE: Well, it says, "May not purchase or
6 otherwise acquire," so I'm assuming you'll figure out what to
7 do with it and if it has a fair market value, but it's de
8 minimus.

9 And the reason I ask that question, we just
10 underwent a huge renovation in my office and we had carrels
11 that were built into the walls that we took down and we put
12 up compartmentalized little areas. And so all of the little
13 desk areas that we had we couldn't use anymore. We took them
14 up to another floor in the building, called up the staff, and
15 said, "Anybody want these?"

16 Because really they were just salvageable half-
17 desks that only would be useful to somebody who sat at that
18 desk and said, "Hey, I could use this in the basement at
19 home," or we would have had to sell them as salvage to some
20 used furniture company, and I don't know that that would have
21 had much value.

1 So under those circumstances, where it's not a
2 question of, "Aha, this is a brand new computer. Let's now
3 sell it," but just salvage material, I don't see that there's
4 a conflict issue that would be of any real moment.

5 MR. MCCALPIN: Let me give you the same list. We
6 had much the same thing. Within the last month, there came
7 out a list. More than 300 items that were available for
8 disposal. People in the office bid on them. They had an
9 auction. You put in the written bid on it and whoever bid
10 the highest got it.

11 CHAIR BATTLE: Yes, so I guess the one issue that
12 really precipitated this is an issue of self-dealing. As
13 long as the decision that's made that it's time to dispose of
14 the property is made by a forum, that assures that surely
15 this is property that needs to be disposed of, I'm wondering
16 about where the conflict would come in. I'm trying to
17 understand the conflict.

18 For example, if the board makes a decision we're
19 going to dispose of this property, then it's no longer useful
20 to the recipient, then we're -- other than the valuation of
21 it, I mean, if it has --

1 MR. FORTUNO: Under this particular wording, if the
2 board or the body that made the decision, then it would be
3 available for purchase by all staff, just not the board.

4 CHAIR BATTLE: Okay.

5 MR. FORTUNO: This proposes to exclude only the
6 decision-makers.

7 CHAIR BATTLE: Involved in the decision to dispose.

8 MS. GLASOW: Or the board. It's always the board.

9 CHAIR BATTLE: Is it always the board
10 that's --

11 MS. GLASOW: It's always the board and staff, if
12 they've been in the decision-making process.

13 MR. FORTUNO: So that you're fully informed, there
14 was a time -- not all that long ago, either -- when the
15 corporation, if it had excess property, would try to sell it
16 and then eventually make it available to employees on a
17 sealed bid basis. Put it all in a large room, you could go
18 in and take a look at it.

19 CHAIR BATTLE: Same kind of thing as Bill was
20 talking about.

21 MR. FORTUNO: Take a number off it, and offer a

1 sealed bid. I think that the IG expressed some concern over
2 that over time, and the result was, for example, when we
3 purchased new computers recently, we had the old computers,
4 which were certainly still usable, and some staff was
5 interested in purchasing those and I know the decision, at
6 least internally, was not to make it available to staff, but
7 simply to donate it to things like schools and other non-
8 profits.

9 MR. MCCALPIN: What was the concern over the prior
10 example?

11 MR. FORTUNO: The IG's concern was, I think -- oh,
12 here, in fact, is Laurie, but I think it's a matter of
13 appearance of potential conflict.

14 MR. MCCALPIN: But if they put in sealed
15 bids --

16 MR. FORTUNO: No, I think that the -- yes, you're
17 right, with a sealed bid, it's not as though by making a
18 decision to put something up for sale, you're necessarily
19 putting it into your own pocket, because others can bid on it
20 as well, but you do now have an opportunity which you would
21 not have otherwise. That is, it's now up for bid and you may

1 be able to purchase it and get a good deal on it.

2 As I said, it's not something about which we have
3 strong feelings, but I think that the IG has expressed some
4 concern over it, and for that reason, I thought that we ought
5 to call that to your attention. And now that Laurie
6 Tarantowicz is in the room, maybe have her come up and --

7 CHAIR BATTLE: Laurie, come join us at the table.

8 MR. MCCALPIN: Come defend yourself.

9 MS. TARANTOWICZ: Yes, if I knew we were --

10 CHAIR BATTLE: Turn to page 50, at the top of page
11 50, section B, there's a provision in the property manual
12 which pertains to the disposition of property. And it
13 addresses the issue of a concern evidently we've been told
14 that the inspector general's office had about the possible
15 conflict of interest in having either board members or
16 employees who have been involved in the decision to dispose
17 of the property being able to purchase it or acquire it.

18 MS. TARANTOWICZ: Right. That was a --

19 MR. MCCALPIN: And the suggestion was that that be
20 eliminated.

21 MS. TARANTOWICZ: We were just concerned with the

1 potential conflict of interest. I mean, you say somebody
2 that makes the decision to sell the property, then turns
3 around -- it may have a potential self interest, if they're
4 going to turn around and purchase the property. I think that
5 was our concern.

6 MR. MCCALPIN: Well, if you put it up for sealed
7 bids, would you still have the same problem? Again, and let
8 everybody bid on it?

9 MS. TARANTOWICZ: All employees?

10 MR. MCCALPIN: Yes.

11 CHAIR BATTLE: You have a provision for selling the
12 property after it's advertised for and received quotes where
13 -- but that provision only pertains to when it's worth more
14 than \$15,000. But it's not a strong burning issue either
15 way, I don't think.

16 MR. HOUSEMAN: Well, I just think first, there may
17 be a distinction between LSC and recipients, but I just think
18 most non-profits don't operate with this kind of a
19 restriction on how they dispose of property. And I don't see
20 any justification for it here.

21 MS. TARANTOWICZ: You don't see a conflict?

1 MR. HOUSEMAN: No, I mean I don't see that there's
2 a potential for much of a conflict in this area, and you
3 know, I don't know how to say it any other way. I just don't
4 --

5 MS. TARANTOWICZ: I don't see --

6 MR. HOUSEMAN: -- talking about -- I don't see the
7 problem with employees or board members having an opportunity
8 to purchase property of a recipient that they're disposing
9 of.

10 MS. TARANTOWICZ: Because they make the decision of
11 whether or not to dispose of it.

12 MR. HOUSEMAN: They may, but they make all kinds of
13 decisions all the time about --

14 MS. TARANTOWICZ: And that's something that
15 involves their own interest, potentially, as a personal
16 interest.

17 MR. HOUSEMAN: Well, I think it's building way up a
18 personal interest. It seems to me, when you're disposing of
19 old personal property, which is normally the case, you want
20 to get rid of it, and you get rid of it fast, if you want to
21 get some money for it you can, and if you can't, you want to

1 get people that are -- you know, know about it, have a chance
2 to get it and get some money out of it that way. It's just -
3 -

4 MS. TARANTOWICZ: Do you think we wouldn't be able
5 to sell it if they didn't offer it to --

6 CHAIR BATTLE: So often, it's hard to find somebody
7 to sell old stuff to. I mean, other than the people around
8 the office who know about it, it's -- I'm trying to figure
9 out, Laurie, help me to understand, and give me an example of
10 the conflict of interest that is embodied in this particular
11 provision.

12 MS. TARANTOWICZ: If --

13 MR. FORTUNO: I think, just to maybe give Laurie a
14 second to get her thoughts together, since she walked in and
15 was sandbagged with this -- for which I apologize, Laurie --

16 MS. TARANTOWICZ: No, it's my fault for coming
17 late.

18 MR. FORTUNO: If, for example, over lunch I said
19 something like, "Yes, my system blew up. I really need a new
20 computer system. I'm going to have to go out and buy, and
21 you know, prices, while they're not bad, I'm still not crazy

1 about it." And then you heard that at the following senior
2 staff meeting I proposed for consideration that we consider
3 replacing all our computers and making those that we
4 currently have available to employees and staff, you might
5 wonder about my motivation.

6 And I think although that is not likely to happen,
7 or happen very often, I think it's that kind of thing that
8 the OIG seems to be concerned about, as I understand it.

9 MR. ERLNBORN: It would seem to me if you can look
10 back and say, "Without this restriction, we have not run into
11 any conflicts of interest," that's kind of instructive. I
12 can think of scenarios where there might be a conflict, but
13 it's just pure speculation.

14 For example, if at the grantee's office they have a
15 printer or a copier that collates and throws out 100 pages a
16 minutes, or something like that, great big thing like that,
17 probably there would be nobody among the employees who would
18 want to buy it. And maybe a board member who has an office
19 could use that. And so there's a potential.

20 But if it hasn't been happening, why do we have to
21 throw this up to prohibit other situations where there isn't

1 really that kind of a conflict?

2 MS. TARANTOWICZ: Well, I don't know that we know
3 that it hasn't been happening.

4 CHAIR BATTLE: We've been using the, "If it ain't
5 broke" kind of philosophy. Tell me -- okay, is the genesis
6 of this provision in anything that we already have in writing
7 in the corporation? So this is new?

8 MS. GLASOW: It only reflects what the
9 corporation's policy is for its own property. And now we're
10 about to apply that out.

11 CHAIR BATTLE: Well, but we haven't in the past
12 applied this to all the programs?

13 MS. GLASOW: That's correct.

14 CHAIR BATTLE: The only thing -- now, I'm just
15 looking at it from a practical standpoint of view. Generally
16 speaking, when you get down to salvage and getting rid of
17 stuff when you buy new stuff, it's real hard to get rid of
18 it. And only the people that are right there and around it
19 are even interested, and you know, you generally will end up
20 with zero.

21 In other words, for example, that collating machine

1 he was talking about. Only somebody near enough to it could
2 even have an interest in it, is even going to bid on it, and
3 be willing to pay a penny for it. And the prospect of
4 selling this stuff -- I'm just talking about the implications
5 out there -- will be really low.

6 And what we might do with this is create a
7 circumstance where you end up having to trash a lot of stuff,
8 because the people that are closest to it can't bid on it and
9 so -- and there's no place you can go and really sell it, so
10 it just has to go in a trash heap. And I'm not sure that
11 that's what we intend. We just intend for there to be no
12 conflict of interest.

13 So maybe what we can do is draft a section that
14 says we intend that there be no conflict of interest in how
15 it's disposed of, and let that be it, without prohibiting the
16 possibility of people who are close enough to this property
17 being able to bid on it.

18 MR. ERLÉN BORN: I'd counsel against doing that,
19 because it sounded to vague to me. I think if we just remove
20 this and leave the regulations as they are now, we're
21 probably better off.

1 MS. TARANTOWICZ: Would you have any objections to
2 putting it out for comments?

3 MR. FORTUNO: This is something which has not yet
4 been published for comment, and what you're doing is
5 reviewing a document and then directing us to publish some
6 version of this, whatever you agree on at the end of the
7 meeting.

8 So if you wanted, you could leave this provision in
9 there for comment purposes, understanding that it could be
10 revisited later, and the final decision would be made with
11 additional information.

12 CHAIR BATTLE: I think that's fair. I don't have a
13 problem with that. Okay.

14 MS. GLASOW: Something I just thought of is in
15 1630, the standards for allocation and cost, include basic
16 standards that apply to non-profits, in the sense that you
17 have to do things in an ethical manner.

18 I don't have the wording in front of me, but I
19 think some of the standards may cover that. But it's
20 something we can look into and think about.

21 CHAIR BATTLE: Okay. All right. If we leave it in

1 for comment, we haven't lost anything.

2 MR. ERLNBORN: I would suggest if you leave it in
3 for comment, for clarity, it may be wise to put a comment
4 after "members," and on the next line after property.

5 Because the way I read this, it seemed to me that board
6 members involved in the decision, which is not what you
7 meant. You mean the board members --

8 CHAIR BATTLE: Period.

9 MS. GLASOW: Right.

10 MR. ERLNBORN: -- period, yes. And I think those
11 comments might help to --

12 CHAIR BATTLE: That's right.

13 MS. GLASOW: Okay.

14 MR. ERLNBORN: -- read it properly.

15 CHAIR BATTLE: Good enough.

16 MR. HOUSEMAN: Thank you. I'm going to now drop
17 this in Linda's lap and go to my other meeting, which Linda
18 may never forgive me for, but --

19 CHAIR BATTLE: Okay, all right, now we can go
20 through the entire manual, starting at page 40.

21 MR. FORTUNO: I should probably state, for the

1 record, that what you have before you, and what appears in
2 the board book, and was made available to the public, does
3 throughout have some spacing which is -- and it's because of
4 our technology. Probably us, as operators, not the
5 technology.

6 I'm sure the technology is fine, but in
7 transferring it from one person's machine to another, over to
8 network, and then having the pagination added, and it printed
9 out, we ended up with these spaces glitches. You will see it
10 throughout.

11 MR. ERLENBORN: I think you probably should make a
12 decision to sell that, but nobody here is going to buy it.

13 MR. FORTUNO: Okay, how would the chair like to
14 proceed with this?

15 CHAIR BATTLE: Well, normally we just take section
16 by section, and if we've got questions, cover it. So let's
17 start with the definition section. Are there any questions
18 about the purpose and definition?

19 I do have a question, in H, about the reversionary
20 interest agreement. When you think about a reversionary
21 interest, a reversionary interest is an interest that one has

1 which is transferred or conveyed to another retaining some
2 portion of an interest and an opportunity to receive back the
3 property under certain circumstances.

4 But usually a reversionary interest is one held by
5 a previous owner of the property. And in the context that
6 we're talking about now, we're really talking about being
7 able to trace the source of funds to purchase the property.
8 And I'm wondering if we need to use the term reversionary
9 interest agreement to describe what we're doing.

10 MS. GLASOW: Actually, we haven't had a chance to
11 ask Danilo, but reversionary interest agreement is a term
12 that's in our accounting guide, and we've been using it for
13 many years, but you are correct. It really suggests
14 something other than what we're trying to portray in this
15 rule.

16 And we could change the term to LSC's property
17 interest agreement, if -- Danilo, are you okay with that?

18 MR. CORDONA: The only reason we have a reversionary
19 --

20 CHAIR BATTLE: Why don't you come to the mic and
21 tell us who you are, so we can have you identified?

1 MR. MCCALPIN: There's no mic.

2 CHAIR BATTLE: I'm sorry -- there is a microphone.

3 MR. CORDONA: My name is Danilo Cardona, I am the
4 acting vice president for programs. Madame Chair, we don't
5 have any objection of, you know, changing the term of
6 original interest agreement. The only reason we left it
7 there was not to confuse programs who are used to that term.

8 MR. ERLNBORN: It would seem to me that as long as
9 you're using it in a sense of defining what the term means
10 for this purpose, you can continue to use it. If it were
11 standing alone, it would be confusing.

12 CHAIR BATTLE: Yes, yes.

13 MS. PERLE: Of course, there's something to be said
14 for the notion that since this manual is prospective, it
15 would be a problem to use a different term, because it sets
16 an example --

17 MS. TARANTOWICZ: I don't feel very strongly about
18 this, but I would think you really would want to define a
19 sort of term that's commonly known to mean something else as
20 something it's not commonly known to mean, but --

21 MR. FORTUNO: Certainly for the record, I agree

1 that what we're talking about here is not what's ordinarily
2 thought of as a reversionary interest. We're talking about
3 recording an interest so that the public is on notice that
4 it's not free and unencumbered, the property, that is, that
5 we have an interest in it.

6 So it need not be reversionary interest, and I
7 agree that that does create some confusion, since it's a term
8 thought of in a slightly different way.

9 MR. MCCALPIN: Well, why not just simply --

10 CHAIR BATTLE: Why not "LSC property interest
11 agreement," as an alternative? Why don't we do that? I
12 think prospectively, even though we can get used to using a
13 term that has a different meaning, if you have an opportunity
14 to clarify it and bring clarity to what you mean, I think
15 this is the time to do it. And we can rumble that through
16 our other places where this term was used to make it
17 accurate. I mean, that would be my choice.

18 MR. FORTUNO: My purpose is --

19 CHAIR BATTLE: I know we normally say if it's not
20 broke, don't fix it, but in a sense, this term is a little
21 bit broke, because it's a misnomer.

1 MR. MCCALPIN: I was going to suggest redo used by
2 so many people over such a long period of time, but add to
3 the ending, "There's a formal written agreement between the
4 corporation and the recipient setting forth the terms of the
5 corporation's approval of the recipient's use of corporation
6 funds to acquire real property and the corporation's right to
7 recoup funds in the event of a sale of the property."

8 In other words, spell out what it really is. We've
9 talked about yesterday, I'm not wedded to those words, but
10 spell out that it's not just approval of the use, but it's
11 specifically reserving the right to recapture, recoup all or
12 part of the purchase price in the event of disposition.

13 MS. GLASOW: I understand that concern, but we
14 actually say that in a later provision, when we get into
15 that, by just using this term. I mean, we say what you want
16 to say in the definition later, when we get into the
17 substantive provisions.

18 MR. ERLENBORN: But I tend to agree with Bill
19 because here, the definition doesn't --

20 CHAIR BATTLE: Talk about reversionary at all.

21 MR. ERLENBORN: It doesn't have anything in the

1 context of the definition that would justify anything like
2 reversion being used in the title.

3 MS. GLASOW: I know I sort of struggled with this
4 too. I think we were basically copying the federal
5 government's definition for this type of entry, so --

6 MR. ERLNBORN: They're not --

7 MR. MCCALPIN: Does the federal government use this
8 term?

9 MS. TARANTOWICZ: No.

10 MS. GLASOW: No.

11 CHAIR BATTLE: Ted's going no.

12 MS. PERLE: My husband's a real estate lawyer, and
13 I was talking about not this provision, but some other thing
14 about the corporation's reversionary interest -- this was
15 some time ago -- and he looked at me like I was crazy. He
16 says, "Well, what do you mean by that?" And I explained what
17 they were talking about.

18 CHAIR BATTLE: That's the point. Lawyers are going
19 to think this means one thing, when it means something else.

20 So I really think --

21 MR. FORTUNO: Can I just add that the purpose of

1 this rule is to reduce to writing in one place, integrated,
2 updated document. And if that's what we're going to do, it
3 seems like this presents the ideal opportunity to -- it may
4 not be quite broke, but it's limping along -- that's the way
5 I am -- and could probably use a little aid there.

6 CHAIR BATTLE: "LSC property."

7 MR. MCCALPIN: Give it a cane.

8 CHAIR BATTLE: My suggestion is that we go with
9 "LSC property interest." I mean, I think people in the field
10 will, if it's used in this context in this manual, understand
11 what we mean. This rule will only have prospective
12 application anyway, so if we got reversionary in some of our
13 previous agreements, that's fine. It won't be affected, I
14 mean, this won't affect those agreements.

15 MR. FORTUNO: And again, this is just for comment -
16 -

17 MR. MCCALPIN: Put "LSC," or just "property
18 interest agreement"?

19 MS. GLASOW: "LSC's property interest agreement."

20 MR. MCCALPIN: If you're going to call it LSC, then
21 you got to move it up to B.

1 MS. GLASOW: Okay. It's in alphabetical order?

2 MR. MCCALPIN: Yes.

3 CHAIR BATTLE: That's fine. You catch everything
4 for us, Bill, that's why we love having you here. Okay, we
5 move it up.

6 MR. FORTUNO: And again, this is for a publication
7 for comment, so if the field believes that it creates some
8 unnecessary confusion --

9 CHAIR BATTLE: They can let us know.

10 MR. FORTUNO: -- we may hear that.

11 CHAIR BATTLE: Okay.

12 MS. GLASOW: I would like to make a correction to
13 footnote seven on page 40. It's missing some words in the
14 second line, the sentence that says, "An acquisition can be
15 through a --" should be, "a purchase of real property or a
16 purchase or lease of personal property."

17 CHAIR BATTLE: That's fine.

18 MR. FORTUNO: Okay.

19 MS. GLASOW: I would --

20 MR. MCCALPIN: The sentence that starts, "An
21 acquisition"?

1 MS. GLASOW: "An acquisition can be through a
2 purchase of real property or a purchase or lease of personal
3 property." And then a new sentence starts, "It can consist -
4 -" We just dropped language in here. Somehow it got messed
5 up.

6 MR. ERLNBORN: Why would you treat a personal
7 property lease differently than a real property lease?

8 MS. GLASOW: Danilo?

9 MR. CARDONA: What was the question?

10 MS. GLASOW: Why are we regulating leases of
11 personal property, but not leases of real property? We had
12 it in the --

13 MR. CARDONA: Leases of personal property come out
14 of the 1630. They need prior approval. 1630 requires --

15 MR. MCCALPIN: Then it makes even less sense, that
16 you have to get prior approval of a lease of personal
17 property, but not a real property.

18 MR. ERLNBORN: Yes, why would that be?

19 MR. MCCALPIN: I don't know. It doesn't make any
20 sense.

21 MR. FARIS: Well, if I may, my name is Ted FARIS.

1 This policy dates from 1986, when the corporation initially
2 promulgated 45 CFR 1630. As you've heard, that regulation
3 requires the corporation's prior approval for certain
4 purchases or leases of personal property over a threshold
5 value, which is \$10,000.

6 At the time, the field sought and got clarification
7 from LSC, that LSC's review and approval of leases of real
8 property is not required.

9 My understanding of the basis for this is that the
10 leases of personal property over \$10,000 are fairly
11 infrequent, but that leases of real property are a common,
12 every day occurrence for most legal services programs, and
13 therefore, should not have to go through a bureaucratic
14 review process before they could occur.

15 MR. ERLNBORN: Probably involved more money, the
16 personal property lease.

17 MR. PERLE: They're --

18 CHAIR BATTLE: But I guess what happens is, if
19 you're leasing space, you're going to have to -- throughout
20 the country, they're going to be renewing those leases either
21 on a biannual basis, every three or four years, and the

1 question is, what interest would LSC have in being involved
2 in that process of renegotiating that lease, or even if they
3 have to move from one space to the other. All of it has to
4 be done within whatever budget they have.

5 But actually, when you look at that, then I raise
6 the question of if the \$10,000 amount was the amount set back
7 in 1986, what is our interest today, and whether that \$10,000
8 is still consistent with what our interest is in a purchase,
9 because we have some thought given, after reviewing this
10 regulation, to the number of times now that one has to
11 replace computers and printers and other items.

12 And at what level does LSC have an interest in
13 assuring that these procedures are utilized in those
14 acquisitions? And I guess we need a response to that.

15 MR. MCCALPIN: I can tell you that leases of
16 personal property were infrequent in 1986. That is not the
17 case in 1999. General electric has a whole business which is
18 leasing any kind of equipment you can possibly be interested
19 in.

20 CHAIR BATTLE: People lease computers today.

21 MR. MCCALPIN: Oh, sure.

1 CHAIR BATTLE: They lease their telephone
2 equipment, they lease --

3 MR. MCCALPIN: Automobiles.

4 CHAIR BATTLE: You know, so today I think there
5 have been some changes that we might want to just take pause
6 and note about this process to just determine exactly what
7 the interest was at the onset, and where we are today, in
8 terms of our interest in and the review of it.

9 MS. GLASOW: Actually, Ted knows this.

10 MR. FARIS: Madame Chair, if I could illuminate
11 this a bit. This particular committee, in its infinite
12 wisdom, saw this in 1997 and addressed it.

13 In the 1986 version of part 1630, the prior
14 approval requirement for personal property applied to any
15 combined purchase or lease of personal property where the
16 value exceeded \$10,000.

17 So if a program was going to lease a whole lot of
18 computer equipment, and all together, printers, cable, and
19 all the whole gamut ran over \$10,000, then the program had to
20 come to LSC for prior approval.

21 What you did in 1997 was eliminated that combined

1 purchase or lease requirement, so that the standard which is
2 in place now is any single item of personal property with
3 value exceeding \$10,000 requires an exchange with LSC.

4 CHAIR BATTLE: Okay. So we had infinite wisdom
5 then. What have we got now?

6 MR. FORTUNO: You can't do any better than that
7 now.

8 MR. MCCALPIN: If we made a mistake, we're going to
9 stick with it.

10 CHAIR BATTLE: Okay. All right. Anything else in
11 the definition section? The next section has to do with
12 acquisition procedures for personal property. Now we talk
13 about aggregate costs over \$10,000. Is this consistent with
14 the change that we made in the accounting guide?

15 MR. FORTUNO: This is personal property with an
16 aggregated cost of over \$10,000. We talking about section
17 (3)(A)?

18 MS. TARANTOWICZ: Yes.

19 MS. PERLE: That's actually not consistent -- is
20 that 1630?

21 MS. TARANTOWICZ: 1630 says --

1 MR. FORTUNO: Each individual item?

2 CHAIR BATTLE: Let's see what we say in 1630.

3 MS. GLASOW: We're talking about, I believe,
4 different actions. One is prior approval and one is types of
5 acquisition.

6 CHAIR BATTLE: Oh, this is like bidding? Okay, all
7 right.

8 MR. FARIS: The prior approval doesn't show up
9 until the top of page 43.

10 CHAIR BATTLE: Okay, all right. Thanks for joining
11 us. We now have with us the president of the corporation.

12 MR. MCCALPIN: The corporation is --

13 MR. MCKAY: Yes. And they've eaten, so
14 we're --

15 CHAIR BATTLE: We're on page 42.

16 MR. FORTUNO: We're discussing the procedures to be
17 followed in the case of acquisition of personal property.

18 CHAIR BATTLE: Okay, this is basically a bidding
19 procedure.

20 MR. MCCALPIN: What page are we on?

21 CHAIR BATTLE: Page 42 --

1 MR. FORTUNO: 42.

2 CHAIR BATTLE: -- section three --

3 MR. MCCALPIN: 42?

4 MR. FORTUNO: Yes.

5 CHAIR BATTLE: -- acquisition procedures for
6 personal property, 42.

7 MR. MCCALPIN: Okay.

8 MR. FORTUNO: Basically what it does is requires
9 competitive quotes to ensure that the recipient has a
10 reasonable basis for determining whether it's a fair deal. D
11 does provide for sole source acquisitions, where appropriate,
12 but A sets out the procedure to be followed in purchasing
13 personal property where the aggregate cost exceeds \$10,000.

14 CHAIR BATTLE: Okay, yes.

15 MR. MCCALPIN: Do you really mean three written
16 requests, or do you mean a written request to at least three
17 vendors? You could publish a request which would go
18 worldwide, really. You don't really mean you have to write
19 three separate letters to three separate vendors. Can't you
20 just make a request that goes broadly?

21 I think what you want is you make a request to at

1 least three vendors, not necessarily three written requests.

2 MR. FORTUNO: Yes. No, that certainly sounds
3 reasonable. I don't see that anybody would take issue with
4 that.

5 MR. ERLNBORN: If it were taken the way it's
6 written now, you'd have different terms on those requests.
7 You have to be very fair to the people you're sending them
8 out to.

9 CHAIR BATTLE: Well, make a request to
10 three --

11 MR. FORTUNO: The idea is to get three quotes. The
12 request can be one request --

13 MR. MCCALPIN: That's right.

14 MR. FORTUNO: -- but what we're asking folks to get
15 is three quotes.

16 CHAIR BATTLE: Three competitive quotes for the
17 property. Okay, so we're proposing a change that would read,
18 "A recipient shall make a request to at least three vendors
19 for competitive quotes for the property." Okay?

20 MR. MCCALPIN: Now, I raise with you the issue that
21 we wrestled with a good deal yesterday. And that was that if

1 what you want to buy is 20 pieces of equipment at \$900 each -
2 - personal property -- you don't have to do this, because
3 it's not property unless it's \$1,000.

4 MR. FORTUNO: That's correct. Because of the way
5 property has been defined --

6 MR. MCCALPIN: That's right.

7 MR. FORTUNO: -- in the definition section. It
8 doesn't meet the threshold, so it doesn't come up at all
9 under this formulation.

10 MR. MCCALPIN: So you divide \$18,000 worth, 20
11 years, \$900 each, and you don't have to go through this.

12 MS. PERLE: It says as an aggregate cost.

13 MR. FORTUNO: No, no, but --

14 CHAIR BATTLE: But property is --

15 MR. FORTUNO: But property is defined as --

16 CHAIR BATTLE: -- defined as something that is
17 valued over \$1,000, \$1,000 or more.

18 MR. MCCALPIN: It's not the piece of property if
19 it's \$900.

20 CHAIR BATTLE: I see, yes.

21 MR. MCCALPIN: Now, do you want to leave it that

1 way?

2 CHAIR BATTLE: I think so. I think you're going to
3 have to set a threshold for your definition.

4 MR. FORTUNO: Yes, whether it's \$1,000 or \$500.

5 CHAIR BATTLE: If you set it at five, somebody
6 would buy a \$1,000,499 item.

7 MR. FORTUNO: And again, this is being published
8 for comment, so that hopefully some of the comments we
9 receive will help to clarify the issues surrounding this and
10 enable us to come back with a better formulation.

11 But for now, \$1,000 -- any other number would be --
12 I don't want to say it's over, because it certainly isn't,
13 but I don't know that there would be a much stronger case for
14 some other number, unless what we're proposing doing is
15 having a definition that doesn't incorporate a number.

16 CHAIR BATTLE: I think we put it out for comment
17 and see what comes back on this particular formulation,
18 because it kind of closely is similar to other governmental
19 bid procedures.

20 MS. GLASOW: You're trying to meet which computers
21 were at that \$1,000 threshold.

1 MR. ERLÉNORN: I just wonder what kind of comments
2 we're going to get back. Do you suppose that grantees out
3 there are going to say, "Oh, wait a minute. We need more
4 regulation, and so change that."

5 CHAIR BATTLE: It probably will go in the other
6 direction, and say \$1,000 is too low.

7 Okay, is there anything else about at least section
8 A through D? Because they all pertain to the bid procedure?

9 If I don't see any other questions, E then moves on
10 to the prior approval provisions of the acquisition procedure
11 for personal property. Are there any questions about the
12 prior approval provision?

13 And Bill, just following up, the three written
14 quotes, the way that it's stated in (E)(1), is that okay?

15 MR. MCCALPIN: Yes.

16 CHAIR BATTLE: Okay.

17 MR. MCCALPIN: Sure.

18 MR. ERLÉNORN: Now this applies only to purchases,
19 not the leases.

20 CHAIR BATTLE: That's right.

21 MR. FORTUNO: Yes.

1 CHAIR BATTLE: Okay. No questions about that? We
2 can move on to four, which has to do with acquisition
3 procedures for real property.

4 MS. GLASOW: Excuse me.

5 CHAIR BATTLE: Mm-hmm?

6 MS. GLASOW: It's an acquisition, and acquisition
7 is defined as including a purchase or lease of personal
8 property. And since we are talking about personal property,
9 it would include --

10 MR. ERLENBORN: You're responding to my comment?
11 Well, I read this to say funds to purchase an individual
12 item. It doesn't say acquire.

13 MS. GLASOW: On what? Maybe I'm looking at the
14 wrong sentence.

15 MR. ERLENBORN: This is 43(E), page 43(E) at the
16 top.

17 MS. GLASOW: Okay, you're right. I'm sorry.

18 CHAIR BATTLE: So do you want to use the word
19 acquire instead of purchase?

20 MR. ERLENBORN: Well, I can't --

21 MS. GLASOW: No, purchase is okay. As long as

1 we're not using acquisition.

2 MR. ERLNBORN: Is there some reason that they're
3 treated differently.

4 MS. GLASOW: Well, they're not all -- okay.

5 MR. ERLNBORN: Is the word acquisition used
6 properly there?

7 MS. GLASOW: Yes, Ted just told me it is, because
8 1630 applies to both. So --

9 MR. FARIS: And we've defined acquisition as
10 purchase of real property or a purchase or lease of personal
11 property.

12 MR. ERLNBORN: Well, then --

13 CHAIR BATTLE: You used the word acquisition.

14 MR. FARIS: It would be acquisition.

15 MR. MCCALPIN: It says purchase at the top.

16 CHAIR BATTLE: Acquire?

17 MR. FARIS: Yes.

18 MS. GLASOW: Okay.

19 MR. ERLNBORN: It's acquire an individual item.

20 MS. GLASOW: Thank you.

21 CHAIR BATTLE: That was a good catch, John. Okay,

1 anything else in section three? Any other questions?
2 Section four? Then we can move on to acquisition procedures
3 for real property.

4 Now, this acquisition procedure is pretty much
5 aligned with where we -- what the corporation now requires
6 for the acquisition of real property.

7 MR. FORTUNO: Yes.

8 CHAIR BATTLE: Okay.

9 MR. FORTUNO: We do, when you get to F, have a
10 couple of points to make, but I'm not sure if you're ready to
11 reach that yet.

12 CHAIR BATTLE: Okay. All right, anything A through
13 D? Any questions? Let's move on to E. In E(3), there was a
14 question --

15 MR. FORTUNO: I ask that the record reflect that
16 was the counsel of the inspector general's phone going off
17 just now.

18 (Laughter.)

19 MS. TARANTOWICZ: That is not true.

20 CHAIR BATTLE: In E(3), which reads, "An agreement
21 by the recipient to place appropriate language in the deed to

1 the property to record the corporation's interest in the
2 property," there's a question about how do you record that
3 LSC interest, and whether the deed is the appropriate
4 instrument for that recordation.

5 And my guess is that many states have different
6 requirements with regard to how that is done, and
7 particularly as we look at this and understand that it is not
8 a reversionary interest, and therefore wouldn't ordinarily be
9 recorded in the deed, but possibly in a separate instrument
10 like a mortgage or some other security interest.

11 MR. FORTUNO: Certainly the corporation's interest
12 is to have some public recordation of our interest in the
13 property, and it need not -- you're right, that it need not
14 be in the deed. And in fact, in some jurisdictions, maybe it
15 couldn't even be recorded in that fashion, but we could
16 probably work up some language that accomplishes the goal of
17 recording our interest, so that the public is on notice that
18 there is a lean or encumbrance of some sort.

19 MS. TARANTOWICZ: What if it just reads, "An
20 agreement by the recipient to record the corporation's
21 interest in the property"?

1 CHAIR BATTLE: To record, in accordance with state
2 law, the corporation's interest in the property.

3 MS. TARANTOWICZ: Right.

4 CHAIR BATTLE: Does that work?

5 MR. ERLNBORN: Well, I don't know about the
6 accordance with state law. I know what you mean,
7 but --

8 MS. TARANTOWICZ: In accordance with law?

9 MR. ERLNBORN: It sounds too broad.

10 CHAIR BATTLE: In accordance with appropriate,
11 applicable state law.

12 MR. ERLNBORN: Okay.

13 CHAIR BATTLE: Okay.

14 MR. MCCALPIN: Look at the second line of paragraph
15 E, right at the end.

16 CHAIR BATTLE: Written reversionary interest
17 agreement.

18 MR. MCCALPIN: Yes.

19 CHAIR BATTLE: We've already changed the name of
20 that.

21 MR. MCCALPIN: Yes.

1 CHAIR BATTLE: It's going to be a written LSC
2 interest agreement.

3 MR. MCCALPIN: Property?

4 CHAIR BATTLE: Property interest agreement. Okay?
5 Anything else in E? Any other questions or concerns about
6 E. Do we have any from any other members of the committee or
7 the board present?

8 (No response.)

9 CHAIR BATTLE: Hearing none, we can move on to
10 section five, retention and use of property purchase with
11 corporation funds.

12 MR. FORTUNO: Along the lines of Mr. Erlenborn's
13 comment earlier, I think that if we refer back to the
14 definition, we find that we don't need to use in F the
15 \$10,000 figure, because that's already in the definition so
16 that the use of \$10,000 in F is redundant to the definition.

17 MS. TARANTOWICZ: Of capital improvement.

18 MR. FORTUNO: Because that, the capital improvement
19 definition, means any expenditure of an amount exceeding
20 \$10,000 to improve real property.

21 MS. TARANTOWICZ: So you need to use the term

1 capital improvement.

2 MR. FORTUNO: So we would have, instead, it would
3 read, "Expenditures for capital improvement require the
4 corporation's prior approval, pursuant
5 to --" and go on. So we would be striking --

6 CHAIR BATTLE: More than \$10,000 of corporation
7 funds to improve -- yes.

8 MR. FORTUNO: Of, all the way through property.

9 CHAIR BATTLE: Yes, that makes sense.

10 MR. FORTUNO: Okay?

11 CHAIR BATTLE: Okay.

12 MR. FORTUNO: And then actually, the last sentence
13 could read --

14 CHAIR BATTLE: Okay, that same section? F?

15 MR. FORTUNO: Yes.

16 CHAIR BATTLE: Okay.

17 MR. FORTUNO: It could read, "When requesting the
18 corporation's prior approval of --" insert "such" before the
19 word "expenditures," have it come after that, and strike, "to
20 improve real property."

21 MR. MCCALPIN: Say that again? "When requesting

1 the corporation's prior approval --"

2 MR. FORTUNO: "Of such expenditures, recipients
3 shall provide to the corporation, in writing, the following."

4 CHAIR BATTLE: Okay. We can always do it a little
5 bit better. Anything else in F? Any other changes to F?

6 Okay, then we move on to section five, which has to
7 do with retention and use of property purchase with
8 corporation funds. Any questions? Comments?

9 Section six, disposal of personal property
10 purchased with corporation funds. With the exception of the
11 one issue that we've already discussed in this particular
12 regulation, is there anything else?

13 Hearing none, section seven, disposal of real
14 property purchased with corporation funds.

15 Section eight, documentation and record-keeping
16 requirements. And recipient policies and procedures.

17 M O T I O N

18 MR. MCCALPIN: Madame Chair, I move that the
19 committee approve the proposed property manual as revised for
20 publication with comments to be received in -- we do it 60 or
21 30?

1 CHAIR BATTLE: It's going to be 60 before we get
2 back together, at least.

3 MR. MCCALPIN: Comments to be received in 60 days.

4 CHAIR BATTLE: Yes.

5 MS. WATLINGTON: Second.

6 CHAIR BATTLE: It's been properly moved and
7 seconded. All in favor?

8 (Chorus of ayes.)

9 CHAIR BATTLE: All opposed?

10 (No response.)

11 CHAIR BATTLE: Motion carries. Okay. Let us take
12 a break for five minutes. Let's take a five minutes break.
13 Ten minutes, let's take ten minutes and we'll get back.

14 MR. MCCALPIN: You've got to call the office.

15 CHAIR BATTLE: Yes.

16 (Laughter.)

17 (A brief recess was taken.)

18 CHAIR BATTLE: Okay, I'm missing at least one or
19 two board members. Do we have water in the back?

20 MR. FORTUNO: Actually, Madame Chair, before we
21 move on, one other thing with respect to the property manual,

1 which actually is just one word, but may well be significant.

2 It is at page 52. I don't know if you would be willing to
3 entertain any comment with respect to that?

4 CHAIR BATTLE: Fifty-two? Tell us what it is.

5 MR. FORTUNO: Fifty-two. It's a paragraph, it's C,
6 and it's the second line. It currently reads, "When a
7 recipient owning real property purchased with corporation
8 funds ceases to receive funding from the corporation, the
9 recipient may, with the approval of the corporation, dispose
10 of the property," and then it goes through three scenarios
11 that require corporation's approval.

12 I think what was intended there, and I've consulted
13 the program folks on this, and they've confirmed that, in
14 fact, what was intended was "shall," where "the approval of
15 the corporation to dispose of the property, according to one
16 of the following --"

17 CHAIR BATTLE: So the word "may" should be "shall"?

18 MR. FORTUNO: Yes.

19 CHAIR BATTLE: Okay. We'll take that amendment.

20 Recipient fund balances contained on page 14 of the
21 board book, and Linda, we're going to take a few things out

1 of order, because I know that you have a time deadline. So
2 if you would like to address your concerns first?

3 MS. PERLE: Thank you. Well, this is a concern. I
4 mean, I think this is a concern that has been expressed all
5 along, and I understand that Alan raised this at the last
6 meeting, when I wasn't there, where we thought that there
7 would be, and have, in fact, heard a few times in the past,
8 at least, circumstances which are, you know, unusual but very
9 compelling, where a program had acquired a fund balance in
10 excess of 25 percent and we recommend, just as we're not
11 committed to keep a balance -- the two places that -- I know
12 that the LSC staff discussion talked about that one case, but
13 I know that there was another situation which happened maybe
14 prior to the time they were looking at the records.

15 One of the situations was insurance payments when a
16 program was the victim of some type of disaster, maybe a
17 flood or a fire, and got a large insurance award. That was
18 the one that the corporation staff picked up.

19 And I was aware of another situation where a
20 program had owned for many years a building which they were
21 not using for their own offices, they were renting to

1 tenants. The market was good, they decided to sell the
2 building and put the money in a fund for future acquisition
3 of real property. But they didn't want to buy at that time,
4 and nobody needed the space for their own needs.

5 And the corporation, at that time -- this was
6 probably 10 years ago -- made some machinations but they did
7 permit them to do it. But I think that the result -- the way
8 that it was finally worked out, they were allowed to keep it,
9 but I don't think it was consistent with the rule. They were
10 making -- but there wasn't that kind of discretion within the
11 corporation's rule, and I think there really should be.

12 MS. FAIRBANKS-WILLIAMS: So they were allowed to
13 keep it as a capital fund for acquisition in the future, but
14 not to spend on something else?

15 MS. PERLE: I believe that's right, as I recall.
16 And we're not talking about a situation where they just
17 allowed to keep it, like they can with the 10 percent. They
18 have to have the corporation's approval for keeping it, and
19 the corporation would -- you know, what we do, the
20 corporation, should have the discretion in those very unusual
21 circumstances to permit a program to keep funds of 25

1 percent.

2 Now, we tried to think of other examples. One of
3 the examples that I put in here, which I'm not saying has
4 actually happened -- but that I wasn't aware that it happened
5 over 25 percent -- where the program was involved in a
6 lawsuit on their own behalf, and was given an award that
7 would bring them over.

8 Or there are situations, which I think Alan raised
9 last time, where programs involved in cases which began
10 before April, 1996, where there were large attorney's fees.
11 And you know, maybe they were involved in a case for 10 years
12 before that, and they're under our rules.

13 MS. FAIRBANKS-WILLIAMS: Yes, we were involved with
14 a migrant's case for over six.

15 MS. PERLE: But so maybe the case is over now, and
16 there has been a large attorney's fee award. And you know,
17 given a lot of other circumstances, it could well put them
18 over the 25 percent.

19 Anyway, I'm not saying that there are a lot of
20 examples, that I have a lot of examples, or that there are
21 likely to be lots of situations, but I think that there has

1 been a reason, occasionally, that it certainly could arise in
2 the future, and I think that the corporation should have the
3 discretion to do that. You know, given that it was done only
4 under a narrow set of circumstances.

5 CHAIR BATTLE: Okay, John?

6 MR. ERLNBORN: I would appreciate if someone would
7 articulate the purpose for the rule? I see what it's
8 addressing, that is, the fund balance that if it exceeds 25
9 percent of the total for the year, but why? What is the
10 reason that we're doing this?

11 MR. FORTUNO: The articulated reason, it said on
12 the rule, is to ensure timely expenditure of LSC funds for
13 the effect of an economical provision of high quality legal
14 assistance to eligible clients.

15 The rule has built into it a provision that allows
16 the grantee to automatically, without LSC's consent, to carry
17 over an amount up to 10 percent of its grant.

18 That would not include other funds received from
19 other entities and special purpose grants, but it does cover
20 LSC's support to them, Basic Field support, and some others.

21 But they can also carry over above that, up to 25 percent,

1 with LSC's approval.

2 MR. ERLNBORN: Did I understand you correctly when
3 you said it does not apply to sources other than LSC?

4 MR. FORTUNO: That's correct.

5 MR. ERLNBORN: Now, how would that then apply in
6 the case of the insurance claim for damage in a hurricane,
7 flood, whatever it might be, the source of that money is the
8 insurance company.

9 MS. PERLE: I think we have to look at the
10 definition, but I think that's probably -- assuming that the
11 property that was destroyed was property that was purchased
12 with LSC funds, then it would -- I mean, we all know that
13 many LSC programs have their LSC share of their overall
14 budgets is less and less, but we also know that in some areas
15 of the country, particularly in the South, that many programs
16 have almost all of their funds coming from LSC, and that any
17 property that they've purchased, real or personal, would
18 probably have been purchased with LSC funds.

19 CHAIR BATTLE: I think that's a good question,
20 John, and I think that one of the things when we last looked
21 at this rule that we asked the staff to do is to go back and

1 look across government at how -- this fund balance is not
2 unique to LSC. Any entity that has government funds has a
3 balance at the end of the year that either has to be carried
4 over or can be recouped.

5 And we wanted to find out what the experience
6 across government was for this. And we found that the 25
7 percent cap that we have is actually stricter than most in
8 other places.

9 So we have historically had a 10 percent carryover
10 without having to request any kind of approval from LSC, and
11 when it gets above that to 25 percent, we establish that cap.
12

13 And so that's a little bit of the history of it,
14 and I think you're right, it is important to know the history
15 of it before we begin to talk about what the future needs to
16 be.

17 MR. ERLNBORN: I wonder if again, using an
18 insurance claim as the example, if that's received late in
19 the year, and has not been expended, does the 25 percent cap
20 really do what is intended, and that is to assure the timely
21 expenditure of funds?

1 It seems to me that it would be untimely
2 expenditure, if in the last two months they had to somehow or
3 other spend the money that they got in that insurance claim.

4 CHAIR BATTLE: That's right. And so that's why I
5 think the proposal that Linda is making is to only cover
6 those very extraordinary circumstances so that LSC will have
7 the authority, under the rule, to give approval for those
8 extraordinary circumstances where the funds come in in
9 December. That's, I think, the nature of the proposal.

10 MS. PERLE: Yes, that's one example. My proposal
11 does not have a particular time, because I use the example of
12 the sale of a building where they didn't want to spend the
13 money right away, they wanted to hold on to it until the
14 market was better, whatever, they didn't need the space for
15 their own operations.

16 And so say that they sold that property in March,
17 and wanted to buy another a year later. I don't think that's
18 -- if they could convince the corporation that it was a good
19 idea, why should the corporation not be able to approve that.

20 So my proposal does not have an end-of-the-year or last-
21 month --

1 CHAIR BATTLE: And in the suggestion that you made
2 about a carryover of real estate proceeds, any amount over 10
3 percent would have to be approved by the corporation. So if
4 that program carried it over for more than a year, we would
5 know it. Because they'd have to request a waiver more than
6 one time in order to do it. Go ahead, Bill.

7 MR. MCCALPIN: You know, as I understand it, the
8 problem, the resistance to authorizing carryovers in excess
9 of 25 percent doesn't have anything much to do with effective
10 management, but simply the clinical reality of big
11 carryovers, when you're looking to the congress for more
12 appropriation.

13 And I suggest to you that while efficient
14 management may decide to hold on to the fund until the market
15 improves, that's a little dicey, clinically. I think it
16 would be, if we're going to do it, we'd be on sounder ground
17 to say that if it comes up toward the end of the year, where
18 we don't have an opportunity to expend it wisely and
19 effectively, then we may get away with it. But if we're just
20 hanging on to it, waiting for the real estate market to
21 improve, I don't think we're on the stronger ground.

1 MS. PERLE: But the corporation would have the
2 authority to not grant that waiver if they thought that under
3 those circumstances it wasn't an appropriate thing to do.

4 We all know that, you know, there are lots of
5 things -- you could plan to, you know, settle on a property
6 in December and something could happen where you couldn't
7 settle on it. And that happens all the time. Especially in
8 commercial situations.

9 Or what if you're using the money to construct a
10 new facility?

11 MR. ERLNBORN: It takes time.

12 MS. PERLE: It takes time, and there's all sorts of
13 things that, you know, may intervene that causes you not to
14 have control over that.

15 MR. EAKELEY: I have a slightly different view. We
16 have a GAO report of some vintage now, but nonetheless, that
17 points fingers at fund balance retention. We have a
18 continuing general issue in the congress, we have a
19 recommendation by management and the OIG that relates not
20 only to those sensitivities that are more heightened in this
21 agency than perhaps others, but also the concern that in a

1 competitive grant-making environment, not every current
2 grantee will continue to receive funding in the future, and
3 that there is a loss of control associated with that, and a
4 policy of recapture when that happens, and a greater risk of
5 not being able to recapture if there are larger fund
6 balances.

7 And it seems to me that this is an area where we
8 should be guided by the recommendation of management and look
9 to work or to make work the extraordinary event when and if
10 it happens internally. This has only happened twice in 25
11 years?

12 MS. PERLE: No, I don't know that it's only
13 happened --

14 MR. EAKELEY: Well, we're only aware of twice in 25
15 years --

16 MS. PERLE: No, I'd say in 10 years. We're only
17 aware of --

18 MR. EAKELEY: Okay, but if, for example, the real
19 estate example, I mean if the funds are obligated, they don't
20 need to be expended, I think, in order to have a -- now,
21 that's just within the 25 percent on the waiver, Suzanne?

1 MS. GLASOW: It would be counted as a fund balance,
2 not --

3 CHAIR BATTLE: You know, the problem becomes this.
4

5 MS. GLASOW: You'd have to close on the property
6 for it to be obligated, I think.

7 MR. EAKELEY: Well, in any event, my thought was if
8 there is something that had to be recaptured because it's in
9 excess of 25 percent in those very unusual and rare events,
10 that there ought to be some capacity to regrant those funds
11 in an appropriate circumstance.

12 But it just doesn't seem to me to be an issue that
13 we should be raising a flag about at this time.

14 MS. PERLE: I guess my response to that is if
15 someone found out that we did this regranting process to
16 basically void the operation of our own rules, that would be
17 more of a political problem.

18 CHAIR BATTLE: I think that that's --

19 MR. EAKELEY: I wouldn't call it a voidance.

20 CHAIR BATTLE: Well, the concern I have is that I
21 think that we're faced with a situation where we've got a cap

1 that assures that we don't have programs taking grant money
2 and not using it, which is essentially what we're trying to
3 do.

4 And we have the possibility of some extraordinary
5 circumstances that do not happen very often, and we're trying
6 to figure out what the appropriate, above-board way to
7 address those issues might be and we have before us this
8 recipient fund balance rule.

9 The issue that you raised, Doug, about the fact
10 that we do now have a competitive process, it seems to me
11 that since any of these requests for a fund balance would
12 have to come before the corporation, certainly internally, we
13 would know and be able to address where and when we might
14 want to grant that waiver, and when we might not want to
15 grant that waiver of anything over 10 percent.

16 So we'd have an opportunity to review that
17 particular issue, but it doesn't resolve this one or two
18 exceptional question. And my view is, a very strictly drawn
19 statement that addresses those exceptions keeps us honest
20 with what the rule is and the requirements are, and it gives
21 notice to the programs if that circumstance comes up, as to

1 how it ought to be addressed.

2 Now, we don't have any language that does that in
3 1628, that addresses the issue, Linda, that you raised. Do
4 we have --

5 MS. PERLE: I gave --

6 CHAIR BATTLE: Okay, I'm sorry.

7 MR. MCCALPIN: And you have my letter.

8 CHAIR BATTLE: Okay. Bill, did you want to address
9 that?

10 MR. MCCALPIN: Well, I think everything -- I might
11 just say she'll understand the political realities, you know,
12 the problem part. That reminds me of a saying that was
13 rampant around the Hill among some members, and that was, "If
14 you want to get re-elected, never cast a vote you have to
15 explain."

16 That's not something that I followed myself. I
17 always had the concept that somebody who was elected had an
18 obligation of educating their constituency, not just blowing
19 with the political winds.

20 My point is that if there's possible criticism of
21 what we've done, it ought to be explainable if we draft the

1 exception carefully. For instance, instead of saying that
2 the funds are attributable to LSC funding, it might say that
3 the funds are not attributable to the current year's funding,
4 or something to that extent.

5 In other words, saying that it's insurance
6 recovery, it's the sale of property. It isn't current
7 funding. These are not funds that were given to the
8 recipient and unused during the year, but it was some
9 exceptional circumstance that brought money into the
10 recipient that could not be spent in a timely fashion.

11 But I think if we draft this carefully to meet
12 those contingencies, we ought to be able to explain to
13 somebody who asks the questions.

14 CHAIR BATTLE: I think that's a good --

15 MS. PERLE: The language that you suggested, and
16 obviously you can use whatever language you want, but it
17 says, "The corporation may grant a waiver to retain a fund
18 balance over 25 percent only in extraordinary and compelling
19 circumstances such as insurance reimbursements, proceeds from
20 the sale of real property, settlement of a lawsuit."

21 You know, you obviously have the authority to do it

1 however you want. I think that meets the kinds of concerns
2 that you were talking --

3 MS. TARANTOWICZ: Linda? May I ask -- I'm sorry --
4 may I ask a -- how does the standard for the waiver of the 25
5 percent differ really from the standard for the waiver from
6 the 10 percent? I thought the understanding that they were
7 supposed to be emergencies unexpected -- I can't remember the
8 exact wording --

9 MS. PERLE: This says, "emergencies unusual or
10 unexpected occurrences."

11 MS. GLASOW: The standard for 10 to 25 percent of
12 special circumstances and the factors you look at in
13 determining that include emergencies. It doesn't necessarily
14 make a lot of sense.

15 MS. PERLE: What this does, you know, the way it's
16 structured, the rule is structured, it's a lot of kind of
17 repetition. But I think that the suggestion is that for the
18 25 percent, you look at all the things that you look at for
19 the 10 percent. But in addition, there has to be an
20 extraordinary, rather than a special circumstance. And you
21 know, maybe we need to think of other language. This is

1 language that we've used before.

2 MS. GLASOW: The language we would suggest, if the
3 committee wants to go that way, is to take out the
4 "extraordinary and compelling" and just put the exact
5 circumstances you want to cover and certainly to through in
6 the year-end language to limit it to year-end, you know,
7 money coming in at the year-end.

8 MS. PERLE: Well, I think if you want to use
9 examples -- I'm not wild about examples as a rule, as was
10 clear from our last discussion of the last rule, but I don't
11 think you can just use one circumstance, because there are
12 going to be more than one circumstance where it's going to
13 really wreak havoc with a program or you know, impose a
14 serious injustice if the corporation is forced to take back
15 the money, because it doesn't have the discretion under the
16 rule to take into account that circumstance, which is
17 slightly different from whatever is there.

18 CHAIR BATTLE: Maria?

19 MS. MERCADO: No, my preference would be for you not
20 to limit it to one circumstance, because just the examples
21 alone that are given in Linda's example show that there's

1 more than one circumstance, and we can probably think of
2 others if we actually sat down and worked on it for a little
3 while. There would be circumstances, not something that's
4 under the --

5 MS. PERLE: Can I say something about the fact that
6 we've only found two circumstances in the last 10 years?
7 That may be because in the particular situation, instead of
8 \$100,000 insurance reimbursement, the program got \$90,000,
9 and so they were at 24 percent rather than 28 or 29 percent.

10

11 And so I think that there are probably lots of
12 circumstances that have arisen where if the dollar amount was
13 slightly higher, it would have put them above the 25 percent.

14 But as it was, it was between 10 and 25 percent, and so the
15 corporation had the discretion to permit it.

16 CHAIR BATTLE: What we're really talking about now
17 is having specific, concrete language with limitations so
18 that it fully, on its face, explains what the exceptions are
19 and how it might apply in extraordinary circumstances.

20 And we've got at least one proposal -- I think
21 Suzanne suggested that we take out the standard of

1 extraordinary and compelling and put instead, the example of
2 -- what did you say?

3 MS. GLASOW: Whatever situations this committee
4 decides on. Year-end insurance payments, or year-end sale of
5 a building.

6 MS. PERLE: But that limits you to those particular
7 --

8 CHAIR BATTLE: If you take out the words "such as,"
9 and say, "only in extraordinary and compelling circumstances
10 when the recipient receives a large insurance reimbursement,
11 proceeds from the sale of real estate, or --" then you're not
12 using those as examples, but you're saying these are the
13 circumstances.

14 MS. PERLE: Well, I mean, I --

15 MR. MCCALPIN: I don't think you want to do that.

16 CHAIR BATTLE: Okay, what do you think?

17 MR. MCCALPIN: I think it's too restrictive.

18 Because something's going to come up inevitably that will not
19 be one of these.

20 MS. PERLE: Yes, exactly.

21 MS. FAIRBANKS-WILLIAMS: There's another problem

1 too, is what you think about the year end. When they make
2 their requests, they will probably make a request in November
3 and something might happen between November and December.

4 Now, some programs are rather clever about spending
5 their year-end money that might go over the 10 percent.
6 Vermont, in times past, has had two disasters. One a fire,
7 and one we flooded out the whole capital. And you know, when
8 you get this money, you have to figure out what you're going
9 to do.

10 When we had the fire, we moved to different
11 quarters and so on, and although we spent the money where we
12 should and how we should, and in a timely fashion, it still
13 took a lot of jockeying in order to do it. Whereas, if we'd
14 had a little more time, we could have done better, you know.

15 MR. MCCALPIN: My recollection is it says here you
16 have to make your request within 30 days after you submit
17 your year-end financial statement. So you're --

18 MS. PERLE: It's afterwards.

19 MR. MCCALPIN: It's after the year's all over.

20 MS. PERLE: And you're not allowed to spend the
21 money during that period.

1 MR. MCCALPIN: Pardon?

2 MS. PERLE: You're not allowed to spend the money
3 during that period, if you --

4 MR. MCCALPIN: So then the problem you raise, I
5 don't think exists.

6 MS. FAIRBANKS-WILLIAMS: But if you are planning --
7 what I'm saying, you are planning in November and December
8 what you're going to report at the year end, and then
9 something suddenly comes in --

10 MR. MCCALPIN: Well, you've got 30 days after your
11 financial report is finished, which is probably two or three
12 months after the year is over anyway. You really can't spend
13 it.

14 CHAIR BATTLE: It might be helpful in this
15 discussion to know what have been the complaints and concerns
16 so that we know, as we look at drafting this language,
17 precisely what concerns have been raised and what critics
18 might think about this.

19 MR. CARDONA: We have no complaints regarding the
20 administration on the regulation. I'm only aware, presently,
21 of one instance that this happened, and the program is

1 Northwest Florida Legal Services. Back in 1995 -- I wasn't
2 even managing this project -- but here is Jay Brown, who -- I
3 mean, it's just one little rule, and he can tell you if there
4 have been any complaints regarding the administration of this
5 rule.

6 CHAIR BATTLE: No, I don't think you understood my
7 question, Danilo. My question to you had to do with us
8 understanding, as we're drafting these rules, what complaints
9 people have had or could -- you mentioned to me that there
10 were complaints about this particular cap in the past. And I
11 think it's important for the committee to understand why it's
12 important for us to make sure that we draft and craft this
13 carefully.

14 MR. CARDONA: I have no complaints in the past of a
15 25 percent. What there has been is a GAO report that put the
16 cap on 25 percent because programs before this -- this rule
17 is not statutorially mandated.

18 CHAIR BATTLE: We understand.

19 MR. CARDONA: And I understand that before, you
20 know, programs were -- and this is prior to when I've been
21 working here -- they were accumulating huge fund balances,

1 above and beyond 25 percent.

2 And a report came from the GAO saying that you
3 know, it shouldn't be -- didn't say 25 percent. Between 21
4 and 25 percent, or something. The corporation chose 25
5 percent.

6 CHAIR BATTLE: Have there been any other inquiries
7 about this at all?

8 MR. CARDONA: There have been inquiries about it,
9 with regards to fund balances themselves, and what the
10 corporation is doing with regards to fund balances.

11 CHAIR BATTLE: Okay.

12 MR. CARDONA: Yes.

13 MR. FORTUNO: I think it's -- if there's a problem
14 that we seek to address -- we've heard a little bit about
15 that -- it doesn't sound like it's overwhelming, and in fact,
16 in some respects, to borrow an expression from our earlier
17 discussion of earlier rules --

18 CHAIR BATTLE: De minimus.

19 MR. FORTUNO: -- if it ain't broke, don't fix it.
20 But if the problem sought to be remedied is significant, then
21 it's weightier. And I haven't heard anything that strikes me

1 as particularly compelling.

2 On the other side of the scale, we have the
3 political implications and the perception. And we've seen
4 over time that that does tend to carry a fair amount of
5 weight.

6 The chair is right, this fund balance issue is not
7 one that's unique to LSC, but the level of scrutiny to which
8 LSC is subjected is relatively unique.

9 MS. PERLE: But the GAO --

10 MR. EAKELEY: I have a little -- I'm sorry, Linda -
11 -

12 MS. PERLE: No, that's all right.

13 MR. EAKELEY: And I don't come here often, and I
14 apologize -- I don't apologize for not coming often, because
15 I'm doing everyone a favor by not -- we published a rule, we
16 had comments, we're at the final stages of approval, but
17 we're doing a debate now between the recipients of the funds
18 and our management?

19 MR. MCCALPIN: No, this is a comment we got post-
20 publication.

21 MS. PERLE: I wasn't at the last board meeting, but

1 as I recall from Alan's reports was this issue was brought up
2 and discussed at the last meeting, and --

3 CHAIR BATTLE: The meeting before the last meeting.

4 MS. PERLE: -- the last meeting of the committee.

5 And the committee asked that the corporation and CLASP to
6 come up with some information about what other federal
7 agencies did with respect to fund balances, and that's in
8 your materials.

9 And so this really is the point at which there
10 needs to be a decision, I think, on this issue, before it's
11 published.

12 I just want to say, with respect to the GAO report,
13 that was a situation where programs had been just
14 accumulating their grant, as Mr. Erlenborn said before, and
15 not spending them in anticipation that they might be
16 refunded. That's, I think, a very different set of
17 circumstances than what we're talking about in terms of the
18 examples, and the corporation -- we're still giving the
19 corporation the discretion to deny a waiver.

20 MR. EAKELEY: I think the way the congress looks at
21 it is that we're conferring more discretion, and I -- if the

1 committee is going to bump the recommendation of management,
2 then I would feel more comfortable at least specifying and
3 not leaving open-ended the discretionary issue, and hitting
4 the situations where we know there could be an injustice or
5 that such as -- but not in the such as, but deal with
6 insurance proceeds, deal with sale of real estate towards the
7 end of the year, and possibly add recovery in a lawsuit of
8 which the recipient is a party.

9 But that may not cover every conceivable
10 alternative, but from a -- it certainly covers the most
11 likely sources, and it provides -- it addresses some of the
12 political sensitivity of the issue at the same time.

13 CHAIR BATTLE: I think that John made a suggestion
14 and we added year-end language to that. I think we're at a
15 point where we need to go ahead and talk about what proposal
16 we're going to approve as a committee.

17 And we have Linda's proposal, we have the proposal
18 we received from the staff, and we also have what we've just
19 been passed out as an alternative. We'll take a look at
20 these and make a decision.

21 MS. MERCADO: The one the IG just passed out?

1 MS. TARANTOWICZ: Actually, it's management.

2 Management's doing --

3 MR. ERLNBORN: No, that was management.

4 MR. MCCALPIN: Is this IG?

5 MS. TARANTOWICZ: No.

6 MR. FORTUNO: No, no, that's management. We think
7 they enlisted the aid of counsel for the IG in its
8 distribution.

9 MR. EAKELEY: She can leap out of her chair more
10 rapidly than Victor can.

11 MS. GLASOW: Actually, the structure of Linda's I
12 like a little better, because mine's a little redundant. But
13 the actual language of the standard, ours is better.

14 CHAIR BATTLE: My one point was I didn't want to
15 see us revise a whole lot of stuff. I'd like to have one
16 section that deals with the extraordinary circumstances, and
17 let that be it, and not -- and when I looked at this before,
18 there was another change that I thought made sense. So
19 1628.3 --

20 MS. GLASOW: Are you looking at staff's?

21 CHAIR BATTLE: Yes, I'm trying to see if I can look

1 at the -- 1628.3 --

2 We have two different changes proposed in B. They
3 really say the same thing.

4 MS. GLASOW: Says the same thing.

5 CHAIR BATTLE: C would be revised and the staff,
6 the management, and IG recommendation reads as follows.
7 "Recipients may request a waiver to retain a fund balance
8 over 25 percent of the LSC support. If the recipient
9 receives a year-end insurance payment, such a request for a
10 waiver may be approved at the discretion of the corporation's
11 -- pursuant to the criteria that's set out earlier in
12 1628(4)(D).

13 MS. MERCADO: This only deals with the insurance
14 payment.

15 MS. GLASOW: We were only recommending the
16 insurance payment as a fall-back position.

17 MS. PERLE: We might want to use something similar
18 to the idea that Mr. McCalpin suggested. In other words,
19 that if during the year they receive an unusual infusion of
20 funds that are LSC derivatives in some sense, I mean -- I'm
21 not correct in the language -- so that it makes it clear that

1 it's only when it's an unusual infusion of funds that --
2 rather than just accumulating their grant funds. Certainly
3 make that --

4 MS. GLASOW: We consider that way too broad, vague
5 a standard, and it's not in accord with your discussion to be
6 very exact on what you --

7 CHAIR BATTLE: I actually like the extraordinary
8 and compelling circumstances language, because we don't
9 expect that people are going to be applying for this often at
10 all. But I do think specifying what we mean by that is the
11 other part of what makes sense.

12 So that instead of -- does this amend an already-
13 existing section?

14 MR. MCCALPIN: Yes. Linda's C? Is that what
15 you're talking about?

16 CHAIR BATTLE: Mm-hmm, right.

17 MR. MCCALPIN: Yes, it amends 1638.3(C).

18 CHAIR BATTLE: Okay.

19 MS. PERLE: What I've done really in taking out the
20 previous C, it's just combining the previous B and C, and
21 then this is a new C.

1 MS. MERCADO: And for D, because the old C --
2 pardon me, and I'm not part of --

3 CHAIR BATTLE: That's okay. You can participate
4 though, we don't mind.

5 MS. MERCADO: The old C, when limited to the
6 criteria in 1628.4(D), which really limits you in what those
7 exigent circumstances might be.

8 MS. GLASOW: Those are made to refer to the
9 criteria for making a decision, so we have to make a change
10 in the criteria section as well as the change in the policy
11 section. So they have to be consistent. And so I've done
12 that in the draft I gave you.

13 CHAIR BATTLE: Okay.

14 MS. PERLE: And my draft does this too, it just
15 does it in a little different way.

16 CHAIR BATTLE: There is another difference, and
17 that is that the CLASP recommendation talks about the
18 granting of the waiver, whereas the management recommendation
19 talks about the recipients request for a waiver. So --

20 MS. PERLE: Doesn't your sentence mean grant?

21 MS. MERCADO: No, it doesn't.

1 CHAIR BATTLE: It may be approved at the discretion
2 of the corporation. Okay.

3 MS. PERLE: You know, I think that the main
4 question is whether you're going to give examples, or whether
5 you're going to give only specific circumstances.

6 CHAIR BATTLE: Let me just ask my committee
7 members, where are you on that? Because I think we could
8 probably take the management draft and work it into what we
9 need to do. Do we want to give examples, or do we want to
10 state the special, extraordinary circumstances for purposes
11 of this particular waiver?

12 MR. MCCALPIN: I'd rather the latter, but I can
13 move with the former.

14 MR. FORTUNO: Well also, if we -- there's one
15 management proposal would then, an alternative, which wasn't
16 the proposal, but I think what we're talking about is the
17 alternative. But neither the alternative that you received
18 from management, which again, is not the proposal, nor the
19 one from CLASP, has a consideration of what other funds the
20 grantee has available.

21 So if it's carrying over a very sizeable non-LSC

1 balance, that's not factored in. And we also don't have a
2 cap, so that what we're talking about is giving the
3 corporation discretion to allow a carryover in excess of 25
4 percent, but we're not saying that's limited to 30, or 40, or
5 50, or 60, or 70, or 80 percent. So --

6 CHAIR BATTLE: Because you really don't know, when
7 you're talking about insurance proceeds, how that's going to
8 relate to the actual grant. I mean, I don't know --

9 MR. FORTUNO: But the more open-ended it is, the
10 more subject to criticism we may find ourselves.

11 CHAIR BATTLE: If we specify the reasons, real
12 estate, you know, a piece of real estate in New York is going
13 to cost more than a piece of real estate in Indiana. You
14 know, if we specify the reasons for it, then the amount is
15 not what's at issue. It's the compelling circumstances in
16 the reason, it seems to me.

17 MR. ERLNBORN: You know, I still come back to the
18 idea that if what we're trying to do is to assure the timely
19 expenditure of grants, we really should say, write a rule
20 that says, "The money that you get this year to be expended
21 this year should be expended in a timely fashion. If there

1 are non-current grant sources, such as sale of real estate,
2 insurance --" but don't have that same rationale that it has
3 to be spent this year.

4 MR. FORTUNO: But the rule defines LSC support as,
5 among other things, any LSC derivative income. So that that
6 would capture --

7 MR. ERLENBORN: That's what we have to get at if
8 we're drafting something that will differentiate funding --

9 MR. MCCALPIN: I suggest to you --

10 MR. ERLENBORN: -- and extraordinary -- receipts of
11 funds that are such as insurance or a sale.

12 MR. MCCALPIN: I suggest to you that insurance
13 proceeds are not income. They're a replacement of capital.

14 MR. ERLENBORN: That's true.

15 CHAIR BATTLE: Are they booked differently, Ted?
16 Insurance proceeds, do they go in the fund balance?

17 MR. MCCALPIN: Derivative income, I view as
18 interest and dividends or rent --

19 MR. FORTUNO: Royalties, or --

20 MR. MCCALPIN: -- or royalties, or something of
21 that sort. But insurance proceeds are not income. Neither

1 are --

2 MR. FORTUNO: Sale proceeds.

3 MR. MCCALPIN: -- really, are proceeds from the
4 sale of real estate, income. They're return of capital.

5 MS. MERCADO: But I think it's still in the fund
6 balance, it's still --

7 MS. GLASOW: But it is, in an accounting, it would
8 show up as -- end up in the fund balance. But I think our
9 rule already gives the corporation the authority to put
10 limits on the time they can keep a fund balance we allow them
11 to keep. And so we've got a lot of control on that.

12 And also, in the factors we look at to approve it,
13 we look at their record, their financial record. So it's a
14 whole lot of oversight and control of that. So I think maybe
15 your concerns are taken care of by the rule, LaVeeda.

16 CHAIR BATTLE: Okay.

17 MS. GLASOW: I think if we can get the standard
18 that you want, then I can fix it through this rule to be
19 consistent in all the sections.

20 CHAIR BATTLE: The question is, I want to make sure
21 that all the committee members are happy with it. Can we get

1 that fix and get it back in time for us to look at it and
2 make sure we're happy with it before we meet tomorrow?

3 MS. GLASOW: What is the standard that you want?

4 CHAIR BATTLE: The standard I'm going to let John
5 articulate.

6 MR. ERLNBORN: Why me?

7 CHAIR BATTLE: Don't ever ask, "Why me?"

8 MR. ERLNBORN: I don't know if it can be drafted.

9 But what I have been articulating is let's see that the
10 current funding for delivery of services is protected, and
11 that the grantee is required to use those in a timely
12 fashion, but not apply that same rule to these unusual
13 influxes of capital.

14 And you might give examples, I don't know if you
15 want to limit it to those examples or not, but what we've
16 been talking about, insurance proceeds, the proceeds of the
17 sale of property --

18 MR. MCCALPIN: Or litigation recovery.

19 MR. ERLNBORN: -- litigation recovery, yes.

20 MS. GLASOW: So what you're trying --

21 MR. ERLNBORN: Because these are non-current funds

1 that we expect them to use for the delivery of service.

2 MS. GLASOW: So what you're trying to say is that
3 type of money coming in will not be considered to be part of
4 a fund balance.

5 MS. PERLE: No, no, no, no.

6 MR. ERLENBORN: Well, let's not do that, because
7 that's too wide open. Let's make it, unless the corporation
8 doesn't want to get involved in making those decisions, we'll
9 let the corporation give the waiver.

10 CHAIR BATTLE: Let me give a stab at it.

11 MS. PERLE: You're saying 25 percent only of -- I
12 mean, that sort of goes back to what Mr. McCalpin said. It's
13 of the 25 percent -- above 25 percent waivers, only in the
14 situation where you're not talking about accumulation of a
15 current grant.

16 MR. ERLENBORN: Exactly.

17 MS. TARANTOWICZ: But I don't think that the rule,
18 as it's been over the years, just has dealt with current
19 funds. And I think that that suggestion changes the whole
20 tenor of the rule. And I think it always dealt with
21 derivative income, and it's really --

1 MS. PERLE: No, but it's only -- what Mr. Erlenborn
2 is saying is only for those decisions above the 25 percent.

3 MS. TARANTOWICZ: Do you know what I'm saying? I
4 think what we're effectively doing is changing the cap from
5 10 percent to a waiver of 25 -- to a cap of 25 percent to a
6 waiver of I don't know what, unless you put specific examples
7 in the rule, if you're going to go above the 25 percent.

8 CHAIR BATTLE: We will put the specific examples
9 in. I mean, I think --

10 MS. TARANTOWICZ: But Mr. Erlenborn's suggestion
11 was to make a difference between current funding and other
12 types of funding, and I don't think the rule, as it's been
13 over the years, was intended to do that, because it's always
14 included derivative income.

15 Now, these kinds of things may not be income, which
16 is a different concept that --

17 CHAIR BATTLE: Can I make a suggestion? "In
18 extraordinary and compelling circumstances, recipients may
19 request a waiver to retain a fund balance over 25 percent of
20 their LSC support. If the recipient receives a year-end
21 proceed for insurance payments, sale of real estate, or

1 payment from settlement of a lawsuit."

2 MS. PERLE: Can I just ask --

3 MR. FORTUNO: Which year end?

4 CHAIR BATTLE: Because that gets at --

5 MR. ERLNBORN: The year end --

6 MS. TARANTOWICZ: End of the year.

7 MS. PERLE: Well, could we say during the year in
8 question they received? I mean, again, I'm concerned that --

9 CHAIR BATTLE: The only way you'll have that fund
10 balance is if you recieved those dollars during that year, so
11 --

12 MS. PERLE: During that --

13 CHAIR BATTLE: We can just take out the year end,
14 if the year end is an issue, and just say, "Insurance
15 proceeds, sale of real estate, payment from settlement of a
16 lawsuit." Those are the only reasons for which you can even
17 apply for a waiver.

18 "Such a request for a waiver may be approved at the
19 discretion of the corporation, pursuant to the criteria set
20 out in 1628.4(D).

21 MR. ERLNBORN: Would it be helpful if there were

1 also the weight of the administration to establish a criteria
2 for the expenditure of those funds? In other words, not just
3 say, "We're going to waive this."

4 MR. FORTUNO: We have that.

5 MS. GLASOW: That's already in there.

6 MR. ERLENBORN: Oh, that's in there?

7 CHAIR BATTLE: Yes, and what you do is, you
8 establish those as part of the granting --

9 MR. ERLENBORN: Right.

10 CHAIR BATTLE: -- the bargain for exchange and the
11 grant of awards.

12 MR. ERLENBORN: Okay.

13 CHAIR BATTLE: Okay.

14 MS. GLASOW: And Jay Brown brought up an important
15 point that if we try to kind of find these in a different
16 category, then what do we do if they cease being LSC
17 recipient, then it's hard getting our fund balance back,
18 because it's not necessarily a fund balance.

19 CHAIR BATTLE: See, I guess my view is I don't want
20 to change the nature of how we handle fund balances for
21 accounting purposes and all other purposes. We just simply

1 want to do a fix of some specific instances in extraordinary
2 circumstances, and that's it. Let's see if that will work.

3 MS. PERLE: Can I just -- what I want to know is --
4 and I wasn't clear from what you just said, is are you really
5 limiting it to those specific circumstances?

6 CHAIR BATTLE: Yes.

7 MR. FORTUNO: Yes.

8 MS. PERLE: Okay.

9 CHAIR BATTLE: I think that's -- I need to hear
10 from my committee. Where are we?

11 MR. ERLNBORN: If we have some others that come up
12 in the future, we can address them at the amendment.

13 MS. PERLE: That'll never happen.

14 MS. WATLINGTON: You don't want it too open, but
15 you don't want to limit it to those things.

16 CHAIR BATTLE: These can all be explained. Anybody
17 looking at them --

18 MR. ERLNBORN: Yes.

19 CHAIR BATTLE: -- will be able to say, "This is the
20 circumstance." Bill, are you comfortable with that? Maria?

21 MS. MERCADO: I don't like it narrow. Inevitably,

1 as soon as you look at it, there's always some other exigent
2 circumstances going to come up. I mean, I would prefer that
3 it's a "such as". It has the extraordinary language in it,
4 but it has them as examples of extraordinary circumstances,
5 whereas we're limiting to --

6 MR. ERLNBORN: I think this is a good compromise.

7 It should help to avoid any criticism of the granting of the
8 waiver, because we're specifying things that are clearly not
9 current grant money for the provision of services, and if
10 that's what we're trying to protect, we're still protecting
11 that.

12 And so we're not -- the recipients, grantees, may
13 not be getting everything they'd like, which would be kind of
14 open-ended, which we could get criticized for. But it's
15 tough on the administration, trying to decide which ones to
16 grant and which not.

17 MS. PERLE: Are we using these three examples, or -
18 - I mean, these three items, or are we just using the one,
19 which is what --

20 CHAIR BATTLE: The three.

21 MR. MCCALPIN: Three.

1 CHAIR BATTLE: We've gone to three. Okay,
2 any --

3 MR. ERLNBORN: Call it a compromise.

4 CHAIR BATTLE: It is a compromise. It's
5 not -- everybody's not happy, so maybe we did good work on
6 this one.

7 MR. ERLNBORN: If everybody's happy, you've made a
8 mistake.

9 CHAIR BATTLE: Any other discussion on this rule?
10 This was the only issue, I think, in this rule that we needed
11 to discuss. Okay.

12 We now finally move to the last item on our agenda,
13 which is the issue of -- you move?

14 MR. MCCALPIN: You finished with this?

15 CHAIR BATTLE: You've got more?

16 MR. MCCALPIN: No, but are you going to have some
17 sort of a motion?

18 CHAIR BATTLE: A motion, yes. Let's do it.

19 MS. GLASOW: Actually, LaVeeda, we need to fix the
20 language on page 18.

21 CHAIR BATTLE: I'm sorry, okay.

1 MS. GLASOW: Because it's --

2 CHAIR BATTLE: Page 18?

3 MS. GLASOW: Paragraph G. On the second line of G
4 it says, "A need for any changes to the timing." We need to
5 change that to, "A need for any changes to the conditions on
6 timing or purposes," and cross out "of".

7 MR. MCCALPIN: I'm sorry, I didn't hear what you
8 were talking about.

9 MS. GLASOW: Page 18.

10 MR. ERLNBORN: The bold paragraph.

11 MS. GLASOW: Second line.

12 MR. MCCALPIN: Yes?

13 MS. GLASOW: "When it determines a need for any
14 changes to the --"

15 MR. MCCALPIN: A special line in G?

16 MS. GLASOW: Yes.

17 MR. MCCALPIN: Oh, well I got a problem in the
18 second line on the page. But go ahead.

19 CHAIR BATTLE: Did you get this one, though, Bill?

20 MR. MCCALPIN: Yes.

21 CHAIR BATTLE: All right.

1 MS. GLASOW: "When it determines a need for any
2 changes to the conditions on timing, or purposes." Get rid
3 of the word of, and put in, "set out in the corporation's
4 written approval." Otherwise, it sounds like we're talking
5 about changes to the approval instead of the conditions in
6 the approval.

7 CHAIR BATTLE: Okay.

8 MS. GLASOW: I think that's it.

9 CHAIR BATTLE: All right, line two for Bill.

10 MR. MCCALPIN: Do you need the word "for" in that
11 line? Go back -- "The need to retain a cash reserve for
12 private attorneys participating in the recipient's PAI
13 program." I guess maybe you do. "For acquisition, for
14 expenditures --"

15 CHAIR BATTLE: Right, you do.

16 MS. MERCADO: You do.

17 MR. MCCALPIN: Okay. In F, what is a "natural line
18 item"?

19 CHAIR BATTLE: We'll get Ted. He comes up to
20 explain natural item to us.

21 MS. GLASOW: We actually talked about that last

1 time we met.

2 CHAIR BATTLE: Yes, we did, we did.

3 MS. GLASOW: It is a term of art in accounting. I
4 do not remember what it means, but we left it in there
5 because we were satisfied that it was an important term.

6 CHAIR BATTLE: Ted explained it last time, didn't
7 he? Jay? Jay, you can come and explain it for us.

8 MR. BROWN: Madame Chairman, it just means that you
9 give -- a natural line item is to actually delineate the
10 specific expense category. For instance, salaries, supplies.
11 Take a look at an accounting statement. It shows each item
12 by line. So you say natural line item being salaries for
13 attorneys, salaries for paralegals, salaries for secretaries.
14 Down the list you go down all the different cost categories
15 are natural line items.

16 CHAIR BATTLE: You got it, Bill?

17 MR. FORTUNO: I think it's a term of art in the
18 accounting industry.

19 MR. BROWN: It just states it by line, each cost
20 that's on the statement. Salaries is one, supplies is one,
21 litigation cost is another. All the different categories of

1 expense.

2 MR. MCCALPIN: Do you have any unnatural line
3 items?

4 (Laughter.)

5 MR. BROWN: You're right. That is --

6 CHAIR BATTLE: A full fund balance at the end of
7 the year is an unnatural line item. Okay, anything else in
8 1628 by anybody else? Bill, you happy?

9 MR. FORTUNO: Ready for a motion?

10 MR. MCCALPIN: Yes.

11 CHAIR BATTLE: Okay. Now --

12 MR. FORTUNO: Has it been moved, or --

13 M O T I O N

14 MR. MCCALPIN: I move we recommend to the board
15 approval of 1628 as amended here today for a publication as a
16 final regulation of the corporation.

17 MS. WATLINGTON: I second.

18 CHAIR BATTLE: It's been properly moved and
19 seconded. All in favor?

20 (Chorus of ayes.)

21 CHAIR BATTLE: All opposed?

1 (No response.)

2 CHAIR BATTLE: The motion carries. Work well done.

3 MR. FORTUNO: Effective date 30 days from date of
4 publication, or --

5 CHAIR BATTLE: That's right.

6 MR. MCCALPIN: Oh, that's --

7 CHAIR BATTLE: That's given.

8 MS. GLASOW: That's normal, yes.

9 MR. MCCALPIN: That's a given.

10 CHAIR BATTLE: That's a given. I think the last
11 item we have on our agenda is consider and act on LSC's FOIA
12 handbook. And then we have, of course, public comments.

13 But we really have, as I understand it, the
14 amendment that we addressed in a regulation some months back
15 to the FOIA, had to do with electronically being able to make
16 documents available to the public. And we handled that
17 particular regulation some time ago.

18 And part of what the change in the government's
19 regulation pertaining to FOIA also requires that there be a
20 handbook that gives guidance to how the procedure works. And
21 what you have in your board book is an external FOIA handbook

1 that kind of gives guidance to people who are looking, or
2 seeking to access public information from the Legal Services
3 Corporation through the FOIA, and it gives some guidance as
4 to how to do it. Is that, in a nutshell --

5 MR. FORTUNO: It's the restatement policy is
6 already in effect, and the issuance of this handbook is
7 something that's required by the electronic FOIA revisions.

8 I should also add that this document, as well as
9 the second one there, which is provided for your information,
10 the internal handbook, are pretty much entirely the handiwork
11 of Rachael Gould, who has been here with us helping out
12 today.

13 CHAIR BATTLE: Well done, Rachael.

14 MR. FORTUNO: She's a second year law student at
15 George Washington University.

16 CHAIR BATTLE: I liked your icons. The looked --
17 all the way throughout, they're interesting and I'm sure that
18 looks real good on the Web, too, because you like to see
19 stuff like that, something to click on.

20 Any questions from the committee about this? Bill?

21 MR. MCCALPIN: I would suggest that in the first

1 line of the second paragraph -- I guess that's of the
2 handbook -- it would more appropriately read, "LSC is headed
3 by an --"

4 CHAIR BATTLE: What page are you on, so we can all
5 follow you?

6 MR. MCCALPIN: Fifty-seven.

7 CHAIR BATTLE: Okay.

8 MR. MCCALPIN: "LSC is headed by an 11 member board
9 of directors appointed by the president with the advice and
10 consent of the Senate."

11 CHAIR BATTLE: Okay. Anything else?

12 MR. MCCALPIN: Yes, let me ask you, looking at the
13 next page, where do regs fit in? Are they -- if they're
14 published in the Federal Register yes, but how does somebody
15 go find them?

16 MS. GLASOW: Well actually, we have them up on our
17 website.

18 MR. MCCALPIN: So --

19 MS. GLASOW: We can have a lot more things in our
20 public reading room and our website that are required by
21 FOIA, this is just listing what's absolutely required by

1 FOIA.

2 MR. ERLNBORN: Do you have a link from your
3 website to the --

4 MS. GLASOW: Yes, actually we're having a whole new
5 system put up very soon. Right now, I think you go through
6 public -- no, I think we have a link for rules and
7 regulations, and LSC act --

8 MR. FORTUNO: As opposed to a link to the code of
9 federal regulations at a different site, our regs, which are
10 part of the CFR, are actually included on our site. So that
11 we don't send you to another site with a link, our regs
12 appear on our site itself.

13 MR. MCCALPIN: So would the regs be in the public
14 reading room, too?

15 MR. FORTUNO: Yes.

16 MS. GLASOW: I'm not sure if that's where we have
17 them categorized right now, but I know they're up on the Web.

18 CHAIR BATTLE: It says --

19 MR. MCCALPIN: Yes, but there are some of us who
20 don't know what a Web is.

21 (Laughter.)

1 MR. ERLNBORN: Spiders make them, you know.

2 CHAIR BATTLE: Bill, you see type one? Type one is
3 anything that's published in the Federal Register, we have it
4 on our Web. Type two is anything we have in our public
5 reading room, and it's listed, and then type three is if you
6 want to request a specific document, then they have a form
7 and there's a process for it.

8 MR. MCCALPIN: Yes, I understand.

9 CHAIR BATTLE: Okay. Anything else? Any other
10 changes or observations about -- okay, Bill.

11 MR. MCCALPIN: Page 59.

12 CHAIR BATTLE: Okay.

13 MR. MCCALPIN: The last bullet under, "Any member
14 of the public may request." The first line includes any
15 request. It seems to me that there's something missing
16 there. "Includes any request for waiver of reduction of FOIA
17 fees as explained below fees may be waived." That's a
18 separate sentence at least, isn't it?

19 MS. GLASOW: Yes, we'll fix that.

20 CHAIR BATTLE: Okay.

21 MR. MCCALPIN: On the next page, second sub-bullet,

1 I suspected are the infra, rather than supra.

2 MS. GLASOW: We'll check that.

3 CHAIR BATTLE: Anything else?

4 MR. MCCALPIN: Page 61, the appeal process. The
5 first bullet, "What's the significance of the word
6 "accordingly" at the end of it? "By writing a letter of the
7 office of legal affairs accordingly."

8 MS. GLASOW: We'll check on that.

9 MR. FORTUNO: I think what --

10 MS. MERCADO: I think quarterly goes to the
11 bullets, it's just not put in correctly.

12 MR. FORTUNO: Well no, I think the initial request
13 may go to one of two places. It may be responded to by the
14 Office of Legal Affairs, or by the Office of Inspector
15 General, so that the appeal goes to the office that acted on
16 the initial request.

17 MR. MCCALPIN: As appropriate.

18 MS. GLASOW: As appropriate.

19 CHAIR BATTLE: As appropriate. Okay. Anything
20 else? Okay.

21 MR. MCCALPIN: What the hell are you going to do at

1 5:00?

2 MS. GLASOW: Did you vote on this?

3 M O T I O N

4 CHAIR BATTLE: Let's now take a vote. I will
5 entertain a motion that we approve as presented to us, the
6 LSC's FOIA handbook, which is required by our law to be on
7 our website as amended by the changes made today.
8 Recommended to the board, approval.

9 MS. WATLINGTON: I so move.

10 MR. MCCALPIN: Was this just going out for
11 publication?

12 CHAIR BATTLE: No, this --

13 MS. GLASOW: No, the FOIA itself requires that we
14 put this on the Web by the end of this calendar year, and it
15 must be adopted by the head of the agency. So we've asked
16 you to consider it, and then recommend to the board tomorrow
17 to adopt it. Therefore, we have fulfilled our FOIA
18 requirements because you've adopted it, and we will have it
19 on the Web before the end of the year.

20 MS. MERCADO: In other words, we can't put it off.
21 We have to decide today.

1 MS. GLASOW: Yes.

2 MR. FORTUNO: And it doesn't embody any new
3 policies or procedures. It's simply a restatement in lay-
4 speak of policies and procedures already in effect, on which
5 this board has acted.

6 M O T I O N

7 CHAIR BATTLE: I'll entertain a motion that we
8 recommend approval by the board.

9 MS. WATLINGTON: I move.

10 MR. ERLNBORN: Second.

11 CHAIR BATTLE: Been moved and seconded. All in
12 favor?

13 (Chorus of ayes.)

14 CHAIR BATTLE: All opposed?

15 (No response.)

16 CHAIR BATTLE: Motion carries. I want to thank all
17 of you for hanging with us through this very lengthy and
18 detailed session of the ops and regs committee. We are now
19 adjourned.

20 (Whereupon, at 3:33 p.m., the meeting was
21 adjourned.)

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